KONRAD ADENAUER STIFTUNG

Reconsidering 'Transition'

Albania 1990–2020 and The Promise of Democracy

Edited by Afrim Krasniqi and Lori E. Amy

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Reconsidering 'Transition': Albania 1990–2020 and the Promise of Democracy

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Dedication

This book is dedicated to the Albanians all over the world, past and present, who have devoted their lives to making Albanian a free, just, and sovereign democratic nation.

Epigraph:

It is the monstrous yet seemingly unanswerable claim of totalitarian rule that, far from being lawless, it goes to the sources of authority from which positive laws received their ultimate sanction.

From Hannah Arendt,
The Origins of Totalitarianism

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Acronyms

AADF	Albanian American Development Foundation
AoA	Assembly of Albania (also Parliament of the Republic of Albania)
AIDFSS	Authority for Information on Former State Security Documents
ALUIZNI	Agency for Legalisation, Urbanisation and Integration of Informal Areas and Buildings
ART	Albanian Radio-Television
ASA	Academy of Albanological Studies
ATA	Albanian Telegraphic Agency
BoA	Bank of Albania
BTI	Bertelsmann Transformation Index
CARDS	Community Assistance for Reconstruction, Development and Stabilisation
CEC	Central Elections Commission
CEIC	Global Economic Data, Indicators, Charts, and Forecasts
CJEU	Court of Justice of the European Union
CPI	Corruption Perceptions Index
DPRMSH	Directorate of State Material Reserves
DRI	Democratic Rights Index
EBRD	European Bank of Reconstruction and Development
EIB	European Investment Bank
EC	European Commission
EDI	Effective Democracy Index
ECHR	European Convention on Human Rights
EU	European Union
EURALIUS	Consolidation of the Justice System in Albania

GoA	Government of Albania
HCJ	High Council of Justice
ICESCR	International Convention on Economic, Social, and Cultural Rights
ICMP	International Commission for Missing Persons
IMF	International Monetary Fund
INSTAT	Albania Institute of Statistics
IOM	International Organization for Migration
ISKK	Institute for the Study of Communist Crimes and Consequences in Albania
JAC	Judicial Appointments Council
MFA	Ministry of Foreign Affairs
MoF	Ministry of Finance
MoJ	Ministry of Justice
NBI	National Bureau of Investigation
NRC	National Registration Centre
NIT	Freedom Houses' Nations in Transit Country Reports
ODIHR	The Organisation for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights
OECD	Organization of Economic Cooperation and Development
OPDAT	US Overseas Prosecutorial Development Assistance and Training
OSCE	Organization for Security and Cooperation in Europe
PA	People's Assembly (under communism)
PLA	Party of Labour of Albania (under communism, also PPSH in Albanian)
PRA	Parliament of the Republic of Albania (also Assembly of Albania)
PPSH	Pary of Labour of Albania (under communism, also PLA in English)
PA	People's Assembly
PPP	Public-Private Partnership
PSR	People's Socialist Republic of Albania
RCC	Regional Cooperation Council
RoL	Rule of Law
RLI	Rule of Law Index

SAA	Stability and Association Agreement
SAC	Special Appellate College
SEE	Southeast Europe
SHISH	State Intelligence Service (formerly SHIK)
SMEs	Small and Medium-sized Enterprises
SPAK	Special Prosecution against Organised Crime and Corruption
UN	United Nations
UNDP	United Nations Development Programme
WB	World Bank
WEF	World Economic Forum
WJP	World Justice Project

A Note on Structure and Organisation

As an interdisciplinary analysis of transition in Albania, this volume speaks to scholars and diplomats, to practitioners and policy makers, and from the diverse fields of law, political science, economics, history, and cultural studies. Synthesizing this range of work into one coherent volume provides a crucial 360-degree perspective on transition—a perspective sorely needed and woefully lacking in development studies. While many readers may choose to concentrate on the chapters most relevant to their own fields of study and practice, we are conscious that others will want to read chapters that lie outside of their areas of specialization. To facilitate ease of reading for those who venture outside of their disciplinary frames, we have included a list of the organizations and institutions referred to throughout the volume, along with their acronyms. Parallel to this, we hope this volume inspires specialists to carry forward the arguments and analyses presented here. To facilitate scholars who wish to pursue further research and analysis, we have also provided a list of the relevant laws discussed across several chapters of this book. As the laws are for more specialized readers, they are included in the back matter of the book, while the list of institutions and organizations more relevant to all readers is included in the front matter.

As *Reconsidering Transition* was moving to production, Albania experienced another in a series of cyberattacks that have targeted the Albanian Government since 2022. It is outside of the scope of this volume to go into a deeper explanation or analysis of these attacks, so here we will say only that analysts link these attacks to the larger geopolitics of the region and consider them retaliation against Albania's political ties with the United States. We bring this matter forward here because, on 1 February 2024, the Albanian

Institute of Statistics (INSTAT) was targeted and its systems were taken offline. Many of the authors in this volume rely upon data from INSTAT. In our final proof-reading for this volume, which included accessing all urls to make sure that they are up to date and accurate, urls linking to INSTAT and to some government sites were not functional. In this unusual circumstance, we have chosen to leave the link as of last access in the citations and references, but to leave off the last access date. Our assumption is that, when government data is back online, the links will remain the same, but that, for transparency's sake, we cannot simply use an older access date when in our final proofing some state servers were down, with no indication of when they will be restored.

Chapter 1—Introduction

Thirty Years After Transition: Lessons Learned in Albania

Afrim Krasniqi
Lori Amy

The International Monetary Fund, in its 2014 report 'Twenty-Five Years of Transition: Post-Communist Europe and the IMF', acknowledges that, from this point forward, transition would be a 'relatively protracted' affair.[1] After admitting ten new member states between 2004 and 2007 and increasing its population by 25 percent, Europe put the brakes on taking new members into its union. With this halting stance on accession, transition has become, across the region, a vexed experience for aspiring and candidate countries. Albania is no exception. What is exceptional about Albania is the absence of serious scientific inquiry about its socio-political history and its specific trajectory in post-communist transition. *Reconsidering Transition: Albania 1990–2020 and the Promise of Democracy* aims to correct this gap. After thirty years of transition, when Europe as a point of reference has become increasingly controversial across the region, Albania's relation to the idea of Europe provides valuable insight on both the assumptions of transition and the future of Europe.

While Albania was the last country in Southeast Europe to abandon communist rule, it has been also the most fervent in its embrace of all that is western. Indeed, Albanians, perhaps more than any other people in the region, embraced Europe and the US as the definitive emblems of 'freedom' and 'democracy'. As the chapters in this volume will show, this identification with the west—though frayed at the seams after thirty years of hard wear—is as important to the evolving idea of Europe in the years to come as is understanding the many inconsistencies and failures in the process of transition.

To fully comprehend the significance of both what has gone wrong in transition in Albania and Albanians' embrace of Europe, we must remember that, three decades ago, this tiny country was an isolated isle of abject poverty, disconnected from the global world. It is commonplace to attribute Albanians' condition in 1990, when the communist regime opened borders that had been closed for nearly half a century, to the extreme brutality of the regime and its paranoid dictator, Enver Hoxha. There is certainly truth to this. While Hoxha formally withdrew from the Warsaw Pact in 1968, Albania had *de facto* cut ties with the Soviet Union by 1961, shortly after Stalin's death prompted Hoxha's fear that changes in the Soviet Union and Warsaw Pact countries would jeopardize his power and position in Albania. For a short time afterwards, Albania followed China in the Cultural Revolution, though the fragile Albania-China relation soon collapsed, leaving Albania even more isolated and impoverished. But the roots of that poverty and isolation extend much further back, to the turn of the 19th century when the Ottomans ruled the region. Albania finally declared independence in 1912, following the wave of romantic revolutions spreading across Europe and the seismic shift in global power structures accompanying the rise of romantic nationalism and the breakup of empires. Prior to independence from the Ottoman Empire, Albania had had no experience with state-building.

What Albania *did* have was a strong clan system that had managed to keep Albanian culture and identity alive throughout millennia of rule by successive empires. Under Roman, Byzantine, and Ottoman rule, Albanians remained *Albanian*.[2] When Albania declared its independence from the Ottoman Empire in 1912, neighbouring countries fiercely

contested Albania existing as an independent state; the Balkan League laid claim to Albanian-inhabited lands and, from 1912–1913, fought to divide Albania amongst themselves. The fighting over whether or not Albania would be allowed an independent existence, and, if so, what its borders would be continued until July 1913, when the Great Powers recognized Albania as an independent sovereign Nation. Barely a year later, World War I broke out.

As Oliver Jens Schmitt and Konrad Clewing so lucidly explain in the first chapter of this volume, 'Fragile Statehood, Strong Statehood: Albania's Path through a Century of Extremes, and How to Write about the Communist Past', Albania could begin in earnest the work of building a state only after World War I ended. Between 1922 and the outbreak of World War II, the nascent nation was busy with the task of developing a *national* consciousness. This history is crucial to understanding the trajectory of post-communist transition in Albania. In the first place, while the Bolshevik revolution of 1919 was sweeping through Russia and a working-class consciousness was spreading around the globe, Albanians were still haunted by the traumas of the first Balkan Wars and the re-invasion of the Balkan League countries during World War I. The notion of a working-class consciousness was meaningless to them. The first communist party in Albania was not established until 8 November 1941, over two years after World War II began. When, in November 1944, the newly minted Partizans rode their tanks into Tirana and claimed the country as their own, they imposed communism on a war-weary people still struggling to define their nation.

Understanding this history helps us to see how the Albanian people entered the turbulent, interminable years of transition as an isolated isle of abject poverty, disconnected from the global world. Between the end of the First World War and the communists imposing rule in 1944, there was little time for Albania to catch up with the infrastructure now characterizing the industrializing west. Roads, schools, hospitals, electricity, phone lines, public transportation—these had barely begun to emerge (and in many of parts of the country, were completely non-existent) when the people were taken hostage by yet another world war. When Enver Hoxha consolidated his power and made Albania a Dictatorship of

the Proletariat, Albanian had had barely a decade of state building under King Zog. In the interwar years, Albania's cosmopolitan elite grew and flourished. Well-educated world travellers, many of these intellectuals, writers, artists, and statesmen had visions of their own for how Albania should develop. Few of them survived the first years of Enver Hoxha's regime.

Political purges were commonplace in all communist countries, so Hoxha's tactics of executing those he perceived as a threat and sending their families to the gulags was not itself unique. What was unique is that, because Albania is such a small country, Hoxha was able to kill or imprison virtually every person that might challenge his power. Not even God could question Enver Hoxha: Albania was the only nation in the world to enshrine a ban against believing in God in its Constitution. In place of God, Enver Hoxha. In this regard, Albania's communist epoch of 1945–1990 marked the most brutal regime in Southeast Europe. In the 1970s, when détente and the Helsinki Accords were loosening the grip of authoritarianism in other parts of Southeast Europe and the Soviet Bloc, Enver Hoxha followed China and the cultural revolution. The few voices advocating for liberalization were promptly purged. While other countries were signing the 1975 Helsinki Charter (which Albania refused to sign), the regime was killing off and imprisoning all possible sources of resistance or reaction. The national consciousness that Albania's founding fathers sought to grow was crushed under the weight of dictatorship and the cult of personality.

This context also helps us to understand a paradoxical similarity between the ways in which both communism and capitalism came as alien impositions to Albanians. Communism was imposed on a people still recovering from the decimations of successive wars and at the very beginning of building a nation. Capitalism was imposed on a people living at near-starvation levels, sent careening into the shock of free markets. Capitalism was as alien to Albanians when communism fell as communism had been at the end of World War II. By the time Albania's communist elite negotiated political pluralism and accepted a market economy, Albanians had lived for nearly a half century in a hard-line one-party totalitarian state. Dissident groups were eradicated, civil resistance silenced. Contact with the western world was

punishable by death, and there was not a centimetre of private property in the country.

Understanding this historical trajectory helps us to see how Albania faced unique difficulties on its path of transformation to a democratic system that other former communist countries did not have to face in exactly the same way. When change did come—belatedly, only after all of the rest of the region's formerly communist countries had abandoned one-party rule and opened borders to the flow of money and goods—it came, not as a result of any violent uprising or revolution, but, rather, through a relatively peaceful displacement of elites. 'Relatively' peaceful because, by December 1990, the country was rocked by a period of student protests and the mass exodus of a people starving, desperate for freedom.[3] This growing intensity of bottom-up pressure, coming mostly from the younger generation, spurred down-tone negotiations at the elite level, effectively bypassing violent revolution or extended civil disobedience.

From the bottom up, 'We want Albania to be just like Europe' became the slogan for students protesting throughout the country in the growing movement that led up to the change of Albania's political system. For students who saw the world opening while they remained oppressed; for the political elite who knew the old systems had failed and they could not go on as they had been; for a population living on the border with starvation and desperate for a change; for the many, many, many people who had lived under the yoke of dictatorship and wanted to throw it off, 'democracy' was the answer, the solution, the only possible thing that could 'save' them. Correspondingly, some in the political class saw 'democracy' as the inevitable way out of Albania's systemic crisis. Others saw it as a highway to freedom. The vast majority of Albanians, for their various reasons, thus jumped on board the democracy train with no questions asked. Hindsight shows that this haphazard jump into freedom, without looking at the hard truths of either the pasts that still needed reckoning or the resources and methods necessary for democracy, has determined the entire process of transition. That jump, far from being a thing of the past, will continue to determine Albania's future unless and until we do, finally, the work that we could not do then.

Thirty years after what seemed to be democracy's grand victory in Albania, the massive support of the 1990s has given way to intensifying waves of disillusionment. Confidence in the possibility of democracy has and continues to decline. On one register, this shift clearly marks the gap between people's often unrealistic expectations of democracy and what is actually possible in a democratic system. Democracy is not a magic formula for 'freedom' and 'prosperity'—a lesson that, indeed, democracies in free-fall around the world also are having to re-learn in a world where authoritarianism is on the rise. As importantly, though, Albanians had no understanding of the basic mechanisms, processes, or social conditions necessary to democracy. There was no political will to give up the power authoritarian rule concentrated in the hands of the rulers; the elites had no intention of rotating power to anybody outside of their inner circles; and there was no knowledge about or capacity to undertake the social and economic reforms crucial to democratic functioning. Completely lacking even the most basic elements of a democratic social sphere, Albania also faced a host of volatile geostrategic situations that further complicated its transition (such as the Balkan Wars of the 1990s, the emerging war on terror, the strategic importance of Albania's Adriatic ports, as well as its supply of oil and natural gas).

In short: Albania embarked upon democracy with no real democrats on board and without any knowledge of the basic concepts of freedom, competition, democracy and rule of law. They did not have the basic preconditions of the democratic process, and they had no realistic path to building these. This intricate web of missing capabilities, high expectations, structural realities and evolving contexts has brought Albania down a long road to a democracy that is as irreversible as it is resented and flawed, and which has resulted in a hybrid democratic regime. And here we return to Albania's relation to the idea of Europe and the future of the European Union. Even with the many, many problems plaguing transition (and the problems are many, and grave)—regardless of its critics and detractors, and despite all of its defects, never before during the century-long history of the Albanian state has the country been more free or more democratic. Compared to 1990, the progress in every field is evident, even extraordinary. Even more so if we measure

Albania's progress from its declaration of independence through today.

In July 2022 Albania started its accession talks with the European Union. From an isolated isle of abject poverty, it is now an EU candidate country. In Albania, this still *means* something. *Reconsidering Transition* charts the three decades of this meaning-making. While certainly concerned with what has gone wrong over the last decades, the authors move beyond simple critique; offering a self-reflective analyses of the larger social, cultural, structural, and political obstacles Albanians face, each looks to the past so as to better chart a future course. As Fatmir Memaj so lucidly argues in his Afterword, we must look to the past to understand what went wrong so that we may better understand and overcome the many challenges facing us in the future.

This volume is also exceptional in that it brings together the voices of people who were part of brining Albania from a planned economy under communist dictatorship to a free-market economy with democratic elections. While several well-known researchers of Albanian and Balkan affairs have published individual studies on Albania's political history, its communist past or the beginnings of transition, this is the first English-language analysis written primarily by Albania's leading intellectuals, public figures who were eyewitnesses and key players in the transition process. These essays, written by experts in the fields of law, political science, public administration, history and cultural studies, cover all aspects of transition and offer a critical re-thinking of transition policies. This publication thus brings depth, perspective, and clarity to several key questions that are fundamental both to the future of transition in Albania and Albania's role in Europe.

Taking the long view on understanding the past, the volume opens with an historical overview by renowned international scholars Oliver Jens Schmitt and Konrad Clewing. Chapter 2, 'Fragile Statehood, Strong Statehood: Albania's Path through a Century of Extremes, and how to Write about the Communist Past' analyses the influences of Albania's Ottoman and Communist past on its political and state-building culture. American scholar Lori Amy looks more deeply at the traumatic legacies of dictatorship

in chapter 3, 'State Terrorism, Psychocultural Trauma, and the Whitewashing of Enver Hoxha: A Moral Reckoning with Communist Privilege'. Amy's analysis shows how both local and international actors participate in a collusion of denial, repression, and distortion that continue to rend the country, and argues that political interventions can be sustainable only if they are grounded in practices of moral repair.

Moving into a political analysis of transition, Afrim Krasniqi and Ina K. Zhupa offer an in-depth exploration of the political situation at the time of transition, the many obstacles Albania faces, and its opportunities and possibilities for an effective democratic transition. In chapter 4, 'Transition and Political System Issues in Albania', Krasniqi analyses the role of Albania's elites, the international community, and other influential stakeholders as they intersect with, shape, transform, and distort institutions and political parties. In chapter 5, 'Effective Democracy in Post-Communist Albania', Ina K. Zhupa maps Albania's learning curve in the key domains of rule of law and separation of powers.

Intersecting economic and judicial reform, Besnik Aliaj and Artan Kacani provide a comprehensive analysis of the development problems Albania inherited from the communist regime and the chaos of unregulated development that followed. Chapter 6, 'How Can Albania Speed up the EU Integration Process? The Role of Reforms in the Formalisation of the Extralegal Economy as an Instrument for Socioeconomic Growth and for Establishing the Rule of Law', offers a platform for understanding the technical and political issues underlying widespread illegality in Albania and a vision for the administrative, judicial, and economic reforms necessary to overcome pervasive corruption and formalize economic development.

The next three chapters offer the most comprehensive analysis of justice reform available to date in Albania, written by people who have been key figures in the transition process. The latest round of sweeping judicial reform, imposed by the US and the EU over the last decade, has been an experiment touted by those imposing it as a success, experienced by those living it as chaotic and corrupt, and as seemingly endless as the process of transition itself. In chapter 7, 'EU Promotion of Rule of Law: Institutional Compliance and Increased Political

Controls in the Area of Judiciary of Reform,' Arolda Elbasani shows that, contrary to expectations, EU conditionality has had little impact on promoting rule of law in Albania; rather, EU insistence on formal institutional change has served to hand the judiciary over to the political class and has hence co-created the conditions of near total state capture in Albania. In chapter 8, 'Odyssey of Reforms: The Hard Road Toward Justice', Ledi Bianku provides a rare map of the stages of justice reform throughout the entire period of transition. Notable for the eye-witness and expert lens of a lawyer, judge, and scholar who has both insider and outsider perspective, Bianku's analysis speaks equally to the Albanian reality and the desires, assumptions, and blind spots of international intervention. Wrapping up the judicial reform thread, Xhezair Zaganjori looks specifically at constitutional law. As a member of the constitutional court, Zaganjori's analysis in chapter 9, 'Constitutional Justice in Albania: Milestones and Issues', provides a critical analysis of issues and setbacks plaguing constitutional justice throughout transition from the point of view of one who sat on the bench.

Moving from the specifics of justice reform to the larger arena of justice and human rights, Altin Gjeta analyses the underlying pathology of the transitional justice enterprise in the first years after transition. Chapter 10, 'Transition without Justice in Post-Communist Albania: Its Implications for Collective Memory Building and Democracy Promotion', argues that failing to bring justice for the state's past abuses has adversely impacted collective memory building in Albania and continues to impede the development of democratic norms and principles. In chapter 11, '30 Years of Economic Transition in Albania: From Shock Therapy (Just 'Shock') to Spontaneous Developments without a Long-term and Clear Strategy', Fatmir Memaj shows how, without these democratic norms and principles, the market economy can produce only oligarchs and strongmen. Memaj's Afterword chronicles, from the beginning of transition through today, the process by which economic reforms have turned the country over to private interests.

This volume stands out for its interdisciplinary, transnational analysis of the complex nexus of factors impacting transition in Albania. Among the many questions

this volume answers are: What are the economic models Albania followed? What were the subsequent social effects? What is the current situation in terms of quality of democracy and human rights? What do the indicators measuring corruption show? What are Albanians' relations with the EU now, and where does the EU integration process stand now in comparison to the 90s slogan 'Albania just as Europe'? Did Albania's transition enable actual transformation? To what extent is the Albanian experience comparable to those of other Eastern and Southeastern European countries? After 3 decades, does the slogan 'we want Albania to be just like Europe' still hold? And, to the extent that it holds, for whom, and what shape does this desire now take?

While facing head-on the complex nexus of issues that have left Albania, in 2023, a captured state, the authors eschew simplistic or ideological reactionism and envision a future for Albania that is built on understanding and learning from the past. This volume also honours the many good people in Albania working with heart and conscience to improve themselves and their country. The best of people with the best of qualifications and intentions, though, can have little effect against the overwhelming systemic problems confounding Albanians. And these systemic problems are not simply a result of the 'Albanian' systems. As several of these chapters show, the interlocking transnational forces of development are co-responsible for the current state of affairs in Albania. Indeed, what is happening in Albania follows what happens in the rest of the world. Captured states, declining democracies, and threats to the rule of law are not unique to Albania.

What *is* unique to Albania is the way in which its experience has been an aporia in Western consciousness. This is as detrimental to the West as it is to Albania. Re-seeing fundamental assumptions of development through the lens of Albanians who have been on the frontlines of transition allows development experts to see what is in their blind spot. As a reflective mirror intended to help all of us learn from the past so that we may do better in the future, this publication will be of interest to policy makers, subject-matter experts, politicians, diplomats, economists, and journalists interested in Albania, the western Balkans, Southeast Europe, post-communist transition, and international development. It will also be of

interest to a large spectrum of students and researchers in universities, think tanks, and academic institutions concerned with transition, transformation, integration and problems of the countries of Southeast Europe. The publication is supported by the Konrad-Adenauer-Stiftung Foundation. It reflects the discussions held with most of the authors cited herein at a conference on transition held in Tirana in February 2021. We thank all contributors and extend a special thanks to Dr. Jörg Baberowski for his initial reviewer's comments.

Prof. Dr. Afrim Krasniqi
Prof. Dr. Lori Amy

[1] *Roaf, James / Atoyan, Ruben / Joshi, Bikas / Krogulski Krzysztof / IMF Staff Team*: 25 Years of Transition Post-Communist Europe and the IMF Regional Economic Issues Special Report. International Monetary Fund, 14 October 2014. https://www.imf.org/external/region/bal/rr/2014/25_years_of_transition.pdf (last accessed: 28 February, 2024).

[2] For an in-depth analysis of how the klan system and oral culture helped the Albanians survive under successive empires, see *Galaty, Michael*: Memory and Nation Building: From Ancient Times to the Islamic State. New York: Rowman & Littlefield, 2018, p. 109–127.

[3] Two key events symbolize for Albanians the country overthrowing communism: the student protest that marched to Skanderbeg Square and pulled down the statue of Envher Hoxha on 20 February 1991, and the approximately 5,000 people that stormed the Embassies and demanded asylum in foreign countries in July 1990. From the point of view of Albanians who could be executed or imprisoned for criticizing their dictator, these were radical acts. Next to the 1989 executions of Nicolae (Ceausescu...) and Elena Ceaușescu, however, or the long years of civil protest and imprisonment endured by dissidents in other Southeastern Europe / Soviet / Soviet Bloc countries, these were mild and relatively non-threatening. For a concise overview of the subversion and dissent in communist countries in Southeast Europe, in particular 'the broader transnational contexts in which activists operated', see *Alston, Charlotte / Laqua, Daniel:* Introduction—Subversion, Dissent and Opposition in Communist Europe and Beyond. In: East Central Europe, 2023 / Volume 50, 2023, number 1, p. 1–13. https://doi.org/10.30965/18763308-50010001 (last accessed: 28 February, 2024).

Chapter 2

Fragile Statehood, Strong Statehood: Albania´s Path through a Century of Extremes, and How to Write about the Communist Past

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Abstract

This chapter analyses the ways in which, thirty years after transition, Albania remains in many respects a 'post-communist' society. One of the most obvious indications of this is the continuing importance of the Socialist Party (juridically the direct successor to the Communists of the older days) as one of the two pillars of the multi-party system that has evolved during the last three decades. The fragility of the rule of law and the weakness of political autonomy of public institutions, which are subject to direct or indirect interference by the government, are another. The long-standing paucity of historical research about the communist period further contributes to continuing post-communist strains within society (i.e., lack of clarity about, understanding of, and critical engagement with the past continue to mire Albania's progress). All of these things have contributed to the fact that the once-expected short transition

from communism to a Westernized democratic political culture has materialized only partially. This essay thus aims to offer some explanation of the path of Albanian statehood in the decades before (1912–1944) and during communist rule so as to shed light on how its short century of extremes[1] has impacted its post-communist development.

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Three decades ago—after months of protest and turmoil, and after having gained the majority of votes in the first, though not fully free, elections in March of 1991—the communist Party of Labour of Albania finally had to relinquish power. In June 1991, the party was renamed the Socialist Party of Albania and, despite the proliferation of parties after 1991, it has remained one of the two pillars of the Albanian party system ever since.

Thirty years is equivalent to a full generation. About half of the inhabitants of the country have been born after the end of the dictatorship and only know about it from what has been told (or not) in their families and in their private lives, and from debates about the dictatorship that have been taking place (or not) in public life. Indeed, in many important aspects the communist period has become the distant past. This is most evident when looking at the external position of the country. Albania, which once had been the most isolated part of communist Eastern Europe, is now a member state of the North Atlantic Treaty Organization (since 2009)—a fact that would have been a nightmare for any of the pre-1991 communist politicians. The once hermetically sealed borders with Greece and the three adjacent countries that emerged from the neighbouring former Yugoslavia (Northern Macedonia, Kosovo and Montenegro) are now wide open, and hundreds of thousands of Albanians have migrated to work and live in Greece and Italy. Intraregional migration within Albania, once so severely controlled that it was in effect banished, has changed the demographic composition of Albania at a breath-taking pace. The rural and mountainous hinterlands are now half deserted, while the cities (mostly, but not only, the capital, Tirana), are burgeoning. Human geography and infrastructure have also dramatically improved and leave a new imprint on everyday life in once remote areas such as in the Northeast; what used to be a day-long (if not forbidden!)

journey from places like Kukës to the capital city or to the seaside may today be done in both directions within a few hours. The state and its institutions, after dwindling away during the first post-communist years and almost evaporating in 1997, have regained tremendous strength.

And still, in spite of all of this, Albania continues to be a 'post-communist' society in many important regards. One of the most obvious indications of this is, as previously mentioned, the continuing importance of the Socialist Party (juridically the direct successor to the Communists of the older days) as one of the two pillars of the multi-party system that has evolved during the last three decades. The fragility of the rule of law and the weakness of political autonomy of public institutions, which are subject to direct or indirect interference by the government, are another. Further, the long-standing paucity of historical research about the communist period deserves to be singled out as a third aspect of continuing post-communist strains within society. In these and in quite a few other regards, the once expected rapid transition from communism to a Westernized democratic political culture has materialized only partially.

To explain the fate of Albania in its short century of extremes (to borrow from Eric Hobsbawm's famous expression), this essay depicts the path of Albanian statehood in the decades before communism (1912-1944) and during communist rule (1944–1991). We explore in some detail the way the history of the communist period has so far been written, not only because the authors of this essay venture a special professional interest in this aspect, but more generally because that topic itself can be seen as a good example to illustrate the societal difficulties in Albania when dealing with this still so important part of the country's past.[2]

Period 1, 1912-1944: Birth of a State and its Uneasy Consolidation

The formation of the Albanian state, and to a large degree also of the core of the modern Albanian nation, occurred in particularly difficult circumstances, even if measured by Balkan standards. The state was unilaterally founded in 1912 at a moment of utmost emergency: within a few weeks of the collapse of the Ottoman Empire, Bulgaria, Greece,

Montenegro, and Serbia attacked and overtook Albanian-inhabited lands. With four out of five already existing Balkan states battling for control of Albanian areas of settlement, only Shkodra and Ioannina were still defended by the Ottomans when, on November 28th, a few dozen Albanian politicians and military leaders gathered in the port town of Vlora to declare the immediate independence of Albania from the Ottoman Empire. At that point, all of today's Albania was on the verge of being partitioned among the Balkan allies, who waged war against the Ottomans to prevent an autonomous Albania from emerging within the Ottoman Empire. Earlier that year, large-scale Albanian uprisings against the Young Turks, with Kosovo at the centre of events, seemed to promise such autonomy to Albania. By the time Albania declared independence, almost all of present-day Albania had already been conquered by Greek, Serbian and Montenegrin forces, and the same was true for all the regions inhabited by other Albanians beyond the borderline that was to come into existence within the next few months.

While the declaration of November 28 came as an improvised act and mostly out of despair, it turned out to have surprisingly long-lasting effects. Very quickly, already in December 1912, the European Great Powers of those days—Austria-Hungary, France, Germany, Great Britain, Italy, and Russia—agreed on principle to see an Albanian state created as part of the new Balkan regional reality. While it is often, and correctly, said that Austria-Hungary and Italy had a vital vote to give in favour of Albanian independence, it is nevertheless important to stress that there was multilateral agreement among the Great Powers to prevent the Balkan League countries from unilaterally and forcefully resettling Albanian-inhabited territories and deliberately engineering the regional composition of forces and territories. Seen from this angle, Albania's effective coming into existence as an international subject (with its borders being agreed upon in essence by mid-1913) needs to be understood as the last important common action of the 19th century European Concert of Powers before this concert itself was ended once and for all with the outbreak of World War I in the summer of 1914.

Even with the luck of the Great Powers' backing, the newly born Albanian nation state still faced tremendous

insecurities and problems. The immediate insecurities derived from her neighbours' still hostile policies. The retreat from Albanian soil was forced upon Serbia and Montenegro by direct threats of military intervention by the Great Powers, more specifically by one of those powers, Austria-Hungary. This certainly could not be understood as long-term stability. In the south, the situation was even worse, since Greece only seemingly left the scene while supplying money, weapons, and paramilitary Greek personnel to a most violently anti-Muslim and pro-Greek uprising by parts of the Orthodox population.

But the most fundamental obstacles to Albanian nation-building came from within, from the institutional legacy that had been left by more than four centuries of Ottoman rule in the regions inhabited by Albanians. Albanian national activities, which started with some earnest only around 1878, occurred only within the Ottoman framework. In contrast to other Balkan peoples, Albanians could not profit from any institutions outside the Ottoman realm. In the early stages of 19th century institution building in Ottoman and post-Ottoman Serbia, for example, Habsburg institutions benefitted Serbs in the Habsburg lands, just as Russian and Western European institutions benefitted the Greek diaspora before the foundation of independent Greece. In contrast, until as late as 1908 (the year of the Young Turk Revolution), practically no Albanian institution-building, beyond the narrow aspects of local tradition and common law, was permitted within the Ottoman setting.

The Empire itself was built upon adherence to Islamic religious traditions and the discriminatory treatment of non-Muslims. Since the majority of Albanians were adherents of Sunni Islam, they were supposed to be represented by the ruling institutions of the Empire. On the other hand, the Muslim Sunni majority enjoyed a privileged judicial and socio-political position vis-à-vis the other religious communities within the Albanian lands and responded with large-scale loyalty towards the empire. Among the Christian Orthodox population, any attempt by individual believers to gain specifically Albanian institutional representation would also lead to direct confrontation with and countermeasures (ranging from excommunication from the church community by anathema to physical endangerment) by the Greek-

language church authorities, who became more and more nationalised (in a Greek sense) themselves during the 19th century. No specific representation of Albanian language and culture, be it in schools or anywhere, could therefore ever be institutionalized among the majority of Albanians before 1908, and even thereafter only with many restraints until 1912. Orthodox Albanian nationalizing elements could only emerge in the new diasporas that evolved late, around 1900, such as in the USA. Within the Ottoman realm, religion-related institutionalization could slowly gain some ground only among Catholics, heterodox Muslim communities such as the Bektashi, and quite prominently (since they were the founders of the most stable explicitly Albanian schools) among the tiny activist groups of neo-Protestants who operated in a few towns targeting potential converts from among the Orthodox.

Under these conditions, state- and nation-building had really very few institutional starting points to refer to in 1912 and in the years thereafter. In those years, the new state had neither an army nor its own administration nor diplomacy. Tutelage from the Great Powers could only be of some, and indeed quite limited, help until World War I began. In the first eight years of its existence, the survival of the state lay mostly in the hands of European Powers who were, more and more, in hostile competition with each other. From 1914 to 1918/20, the theoretical neutrality of Albania and its territory was ignored not only by its neighbour states, but also by Italy in 1914 and, from 1915 onward, by Austria-Hungary, as well as by France in 1916.

After the war, at last, Albanian society became more than a mere pawn of Great Power interests. After not having been officially represented at the Paris Peace Conferences and while still facing the danger of being partitioned, a combination of exhaustion on the side of the former Entente powers France and Italy and of rising internal Albanian resistance to their control of important parts of Southern Albania led to their withdrawal; first, of the French and then, after considerable armed clashes with fighters from the provisional Albanian Government, of the Italian troops who were forced to retreat from the country by mid-1920. Accession to the League of Nations and tangible British economic interest helped

the Albanian state to gain some stability, but not enough to stabilize intra-Albanian politics, which continued to be marred by profound factionalism. At least one thing, though, Albanian politicians had in common: the fragility of statehood shaped their thinking. Knowing how weak the institutional legacy of the Ottoman Empire really was, they also knew that Albania was hardly prepared for efficient statehood even by regional standards.

It is against this background that the factual building of Albanian statehood after 1920 must be appreciated. The whole first phase up to the Italian invasion in March 1939 proved to be particularly difficult. The attempt to introduce a parliamentary system in a country whose population was in no way prepared for it, and was predominantly illiterate, had failed by the mid-1920's. By the end of 1924, under the leadership of Ahmed Zogu, an authoritarian system emerged with full-fledged control over its adversaries. In 1928, Zogu's rule was transformed into the first so-called royal dictatorship-type of rule in the Balkans. Zogu as a figure and his rule are still quite controversial in Albania today, not the least because communist historiography depicted him as a bluntly negative figure, in stark contrast to the glorified communist leader Enver Hoxha.

In fact, corruption, abuse of power, and political violence against opponents were part of Zogu's regime. His achievement, though, was to slowly build up the state, which, in terms of state-society relations, had previously existed only on paper. Certainly not everything went according to 'Western' ideals: the gendarmerie for instance, which was built up with the help of Austrian and British specialists, became a strong pillar of rule and a certain state security—though in practice, many low-grade gendarmes had to do compulsory labour on their officers' estates, proving the fact that little was done to overcome the inherited divide between the post-Ottoman big landowners and the poor majority of the still overwhelmingly rural population. The gendarmes were feared by the civilian population because of their corruption and their proneness to violence. But still, in rural areas, they were certainly the most important representatives of the state and its power, especially in the mountains of the country, where other state institutions hardly made any headway.

A modern history of the Albanian fiscal system has yet to be written, but the very fact that the state effectively generated revenue at the time of Zogu is remarkable—even the Ottomans had not consistently achieved this. The Ottomans had also failed with the project of establishing a state monopoly on the use of force. Under Zogu, at least, the path in this direction seriously commenced. The Albanian state also made itself felt in the new school system that had been neglected for so long. In order to overcome the heritage of religious divides in the public institutional setting, schools were now introduced as institutions of a national secularism. This moderate secularisation of interwar Albania was a deliberate response to the Ottoman heritage, as was the gradual unification of such different and independent regions as the southern lowlands and the remote mountains of the north. While this transregional effort of integration occurred with no discernible coherent strategy, it must nevertheless be seen as an achievement.

Interestingly enough, no hard measures needed to be taken to pursue the project of secularization: the state policy of unveiling Muslim women for instance was implemented by persuasion and not by force. In this and other respects, Albanian secularisation differed markedly from the radical approach of Turkish Kemalism as well as from the high level of social control faith and religion continued to exercise in neighbouring countries such as Greece. This should be all the more emphasised precisely because many Sunni Albanians still maintained ties to post-Ottoman Turkey and closely watched how the former heartland of the Ottoman Empire was developing. The fact that Sunni Albanians, who made up the majority of the population, effectively recognised Christian Albanians and heterodox Muslims such as the Bektashi as co-nationals with equal political and civil rights is one of the greatest achievements of the Albanian state, which is in stark contrast to almost everywhere else around the globe wherever mainstream Sunni Islam plays a decisive role in the demographic composition of societies. In Albania, nothing even remotely comparable to the persecution of Christians of Armenian or Syriac confessions in the latest stages of the Ottoman Empire ever happened, nor anything comparable to the deliberate marginalization of the remaining Christians

in the early Turkish Republic. This religious tolerance was achieved in spite of all the close links and ongoing attachment quite a few Sunni Albanians still felt for the lost Empire. Ahmed Zogu, himself an obviously weak believer of Islam, contributed a lot to the state's control over all religious communities, a fact which needs to be seen as a fundamental aspect of internal state-building within the post-Ottoman society of his days. Sunnis and Bektashi were given separate religious institutions, not the least to let their weight check each other; the independent Autocephalous Orthodox Church as declared in 1922 and recognised by the Patriarchate of Constantinople (Istanbul) in 1937 was another achievement to mitigate outside factors that might otherwise have been able to play a potentially uncontrollable role in Albanian society and politics.

The achievement of national integration in interwar Albania should therefore not be underestimated—an Albanian modern nation gradually emerged within the new borders through living together in a nation-state whose—admittedly still weak—institutions worked towards levelling out religious and regional differences. Slowly, trust was built up, especially on the part of the Christians, whose original reservations about the socially and politically dominant Sunnis of former times could not simply disappear overnight after centuries of Ottoman rule.

Yet in other respects, the Albanian state and the state-affiliated institutions quickly reached their limits in the interwar period: there was a lack of almost everything in terms of practical needs, including money, even rudimentary infrastructure, and trained personnel. The Ottoman legacy had been clear and devastating in this respect: no modern roads, no railways, not even the beginnings of industrial production, a vast predominance of outdated agricultural technology, widespread poverty, and subsistence cattle breeding in the mountains along with Ottoman latifundia farming in the plains—and all this in a state whose neighbours were still not at all friendly towards it.

Given this starting condition, it was inevitable that Albania's policy would seek the support of a foreign protecting power. Austria-Hungary had fallen away, and after the short-lived and underfinanced involvement of the League of Nations,

fascist Italy took its place and gradually sharpened its control over Albanian politics. Even before 1939, Albania had fallen into a kind of semi-colonial dependence on Mussolini's Impero. At least Zogu managed to delay the loss of independence. In the spring of 1939, though, the Italians invaded, partly to compete with Germany's territorial expansion in Austria and Czechoslovakia. The de facto annexation of Albania to Italy ended the first phase of Albanian independence.

Between March 1939 and the end of November 1944, Albania's statehood was massively restricted by fascist Italy and, for little more than a few months, by Nazi Germany. Even afterwards, between 1944 and 1948, and now under communist rule, Albania was largely dependent on neighbouring communist Yugoslavia, to such an extent that its incorporation into that state did not seem an unlikely possibility. The new governing elite following World War II was certainly aware of the fact that Albania, similar to the first years of its existence in the Balkan Wars and World War I, had once again undergone almost a full decade of insecure survival of the state (1939-1948). As part of a response to the military and political vulnerability of the small state, different segments of the political elites rallied around such politically contrasting camps as monarchists, nationalists and communists. Different players came to terms with the different external powers, be they Italy, Germany or Yugoslavia, and took opportunities to develop their own political careers by aligning (or subordinating) themselves with—or at some moments confronting—one or the other of these external powers. Indeed, alongside repression (by Italy) and political guidance and control (by communist Yugoslavia), both Italy and Yugoslavia also invested in Albania, which they each regarded as in their long-term area of interest. As a consequence, and only seemingly paradoxically, quite a few of the communist infrastructural and industrial plans implemented shortly after 1944 came from the drawers of fascist planners.

Yet what only the Axis Powers, and most notably Italy, had had to offer, was territorial expansion beyond the borders that had been drawn in 1913. Albania (as a half-autonomous entity and under external control by Italy) was expanded to some border areas of Montenegro, to about two-thirds

of Kosovo and parts of Western Macedonia, which were first governed and soon annexed as a result of the partition of Yugoslavia in 1941. In the same year, a small part of northwesternmost Greece (in the small region of Thesprotia, south of the current border at Konispol) was put under Albanian civil administration. In those territories, support to the communist partisans was low, since everybody living there could foresee that war lost by the Axis would result in the reinstalment, respectively, of Yugoslav and Greek rule. Indeed, these territorial gains were immediately reversed in 1944/45, and the Muslim Albanian Chams of northwestern Greece lost their native home as a result.

Before the communist regime change occurred, Albania had to endure a civil war as a further burden in its own century of extremes. Like Greece and Yugoslavia, the country suffered not only from the subsequent occupation by the Axis powers. In parallel to, and closely intertwined with this, all internal parties—communists, nationalists and monarchists—fought an increasingly bitter civil war, with the communists being most determined and active in fighting. Supported by their Yugoslav counterparts, the communists decisively won their internal war in November 1944. The victors cracked down on the losers with extreme harshness, and during the entire period of their rule they instituted a commemorative culture, reminiscent of Orwell, that erased or condemned the memory of its perceived opponents. The Catholic culture of northern Albania, so rich in tradition, was hit particularly hard and was erased from the country's cultural public identity for decades to come.

Period 2, 1944-1991: The communist Past and the Problem of Writing its History

The transformation of the governmental system in late 1944 was abrupt and extended to all spheres of power: apart from the support given by the Yugoslav partisans, the new rulers could rightly claim communist victory as solely theirs, since they had achieved it in their own 'War of Liberation' against Italian and German occupants. The situation was similar, but to some extent even more extreme, than it was across the old and new border in Yugoslavia; in contrast to that country, no Soviet troops whatsoever had ever entered

Albania and hence did not accompany the final communist victory. The new system wouldn't have come to power unless by war, and most probably would not have been successfully introduced without the simultaneous victory of communism in the other parts of Eastern and Southeast Europe. But under local conditions, its success was also rooted in a process of intra-Albanian social and political radicalization.[3]

At the end of the war, Albanian communists had clearly won their part of the Civil War against their intra-Albanian competitors, even though anti-communist armed resistance smouldered in the Northern Mountains for some more years to come. One should also stress that the communist's full takeover of power had taken place locally even before. In September 1942, communist and royalist forces aligned in the 'National Liberation Movement'; by the autumn of 1943, the movement was fully transformed into a communist organization and any territory gained by the Movement was immediately turned into an area of mono-party rule. From this beginning, the practice extended nation-wide and war victory legitimated undisputable communist rule across the entire country.

One of the main political outcomes of war-time consolidation of power and one-party rule was that, like in Yugoslavia, but different than in the countries taken into the Soviet sphere by the advance of the Red Army, there was no political transition period where other parties might still have been somehow tolerated. In Albania, no political action outside the structures of the Communist Party was allowed at all, from 1943 until the end of 1990. The only obstacle on this long-standing path of dictatorial rule was of a temporary nature and valid only in the initial stage of the new regime: to acquire international recognition as a government (and of Albania as an independent state and ally of the war winning parties), the 'Provisional Democratic Government' headed by Enver Hoxha (and formed exclusively of communists) had to allow for elections in December 1945. However, only one single list was allowed (the 'Front'), though some non-party members coming from the wartime 'Front' were allowed to run on that 'unified' list of candidates. It is more than telling for the dictatorial nature of the new regime that, just a few months later, from September 1946 on, many of the 34

independent members of parliament as elected in December 1945 were arrested. 16 of them were turned into victims of two show trials in 1947 and executed, along with 24 persons close to them. The message was clear: not even those who had been very close to the communists during wartime were now allowed to have a somewhat divergent say in politics and society. And any independent position could be declared to be treason in service of the western Powers and was life-threatening.[4]

The borders of the state were also redrawn immediately after the war ended. Aspirations to bring Albanian populations into the borders of Albania were quashed when the borders, expanded under occupier rule, were returned to their pre-1941 demarcations. The close relationship between partisans and Party structures on both sides of the old (and new) borderline may have allowed for a few discussions between individuals about how the Kosovo question should be settled, but neither before the 1948 break-up of the Yugoslav-Soviet alliance nor after was any substantial policy developed to advance aspirations for Albanians to be reunited in one land. Beyond the power differential between Albania and Yugoslavia, strategic considerations also may have played a role in border agreements. When, for example, Soviet-Albanian relations became strained, finally breaking all together in 1961,[5] Yugoslavia served as buffer against Soviet troops in the immediate Albanian neighbourhood. Most probably, Albanian communists had also learned the lesson during the war that Kosovars would not be easily included as docile members of the communist ranks.

Thus, within the new-old borders of Albania, the battle against all possible obstacles to the communists' full control of politics and society became manifold. Whatever social or institutional autonomy may have existed amongst Albanians was to be reduced and, finally, completely erased. The battle penetrated every centimetre of the public and private sphere, from subduing autonomous individuals or groups to quelling the self-confidence of non-communist experts (as can be seen from the two new editions and the subsequent monograph on draining and transforming the swamp of Maliq[6]); to killing presumed spies and saboteurs; to finally, in 1967, fully forbidding religion and all religious congregations. The battle was fought as part of a never-ending class struggle,

including a 'war' on any remnants of older, non-communist society. Basic personal rights were systematically denied or violated. This included a strategy of denying and levelling most of the private property in the country—a strategy which continued into the 1980s, when the peasants, the majority of the population, were to lose even most of their house gardens.[7] Policies of injustice of course extended to many other institutions of suppression, ranging from party-purges to show trials and a generally untrustworthy (and when politically needed profoundly unjust) juridical system[8]; from political imprisonment to internment camps for politically suspect persons and, in many cases, also their families[9]; to the actions of the secret service '*Sigurimi*' (factually founded by the Party in 1943). By non-transparently attaching the '*Sigurimi*' to the institution of the Armed Forces, the Party was able to further weaken the possible importance of the state and of its institutions in favour of the priority of the Party in all political and administrative affairs. While, formally, the '*Sigurimi*' was under, respectively, the Vice Minister of Internal Affairs and a special working platform attached to the Central Committee of the Party that effectively had the final say, the '*Sigurimi*' attachment to the Armed Forces may be understood as a deliberate blurring of responsibilities that undermined the independent function of institutions and hence state formation.[10]

To be sure, communist rule wasn't only built upon oppression and an atmosphere of fear. Its legitimacy among a considerable part of the populace was partly derived from its nimbus of having liberated the country from foreign intrusion and occupation by the Italians and the Germans. Banning private property by collectivization was the long-term aim (started in 1946 and completed by 1967), but it wasn't the first step the government undertook in the countryside—on the contrary, the first significant step there was redistribution of big landownership and larger 'kulak' properties to smaller peasants, which certainly helped to popularize the new rule among the latter.[11] And industrialization, while being mostly ineffective—or at least, by international standards, non-competitive—also led to a considerable social upward mobility for thousands of new industrial workers who were at the top of the symbolic value-ladder of the system's ideology and who,

because of the scarcity of trained workers and other trained personnel, had considerable room to decide, not in politics, but on their own working input (or non-input). The spread of literacy and the new institutions, e. g. of higher education and health care, all also helped to gain public support.

Generally, the policies implemented by the Albanian communists between 1944 and 1991 can in many ways be understood as a response to the former (and partly continuing) fragility of the Albanian state. At the end of their rule, many an inhabitant of Albania despised and hated the institutions that the communists had built; but the considerable success in building up institutions in fields where the state had not made itself felt before 1944 also explains part of the retrospective beatification that their rule enjoys among some important parts of the population of today. Without doubt, the factors inhibiting stable state formation before World War II—the earlier experience of extensive political, economic and military dependence on foreign countries, former differences of loyalties among adherents of different religions and inhabitants of diverging regions, the low level of education of the population—were, after 1944, reasonably seen as obstacles that had to be overcome on the path to a modern nation state. From this perspective, Albania can be seen as undergoing an almost ideal type of modernising dictatorship, though the dictatorship can be said to have been benevolent only when strictly regarded from within its own logic and ideological thinking. The governmental practise was characterised by undeniably totalitarian features, at least so until the death of the long-term dictator Enver Hoxha in 1985.

Historiography in the Making

Given the eminent importance of the heritage of the communist period, even for today's realities and socio-political cleavages in Albania, Albanian society would and will greatly profit from thorough scholarly analyses of that part of the recent past. And so would, for the sake of comparative approaches, international historiography on Eastern and Southeast Europe after 1945. The picture offered in this regard by the current state of historiography is of striking ambivalence. To start with the positive edge, this ambivalence

is the result of forward strides during the most recent years. Seen from an optimistic angle, one could even say, and hope, that we are just about to witness a decisive turn to the better, since at present there is a quite noticeable increase in scholarly studies on the actual functioning of communist rule and of the reaction to that rule within society.

Two new major institutional pillars have been supportive of this development. The first is the public 'Institute for Studies of the Crimes and Consequences of Communism' (Instituti i Studimeve për Krimet dhe Pasojat e Komunizmit, ISKK) founded in 2010.[12] Judging from its activities and publications, the Institute has so far been facing the somewhat difficult task of fulfilling a dual responsibility: first, to give a voice to the unduly marginalized sufferings of victims of Albanian communism (and this not only on a scholarly level, but also by addressing the general public through more popular writings and recorded memories); and, secondly, to address research issues on how the system functioned and what effects it had on society, or at least so with regard to the methods of oppression used to exert rule and control.[13] To fulfil those demanding two tasks has been made even more difficult by the long-term non-accessibility of some of the most important archival sources.

The second institutional step therefore seems to be ever more important, namely the transfer of the surviving Archives of the former *Sigurimi* (for the whole period from 1944 to 1991) from the current secret service (SHISH) to a new institution founded in 2017: the 'Authority for Information on Documents of the Former State Security' (AIDFSS, or *Autoriteti për Informim mbi Dokumentat e ish-Sigurimit të Shtetit*). As a regular and ongoing process, in order to make the archives accessible to both the Albanian public and to researchers, de-classification of the many thousands of documents now gathered under this new authority started early in 2018 and will continue for some time to come. Editing some specific files has to some extent also become a scholarly merit of that new authority and will increasingly help to incite new research on the period.[14] Additionally, in the very last years, the Historical Institute at the Academy for Albanological Studies (Akademia e Studimeve Albanologjike, ASA) has turned into a third important institutional player in

the research field, with a rising number of book publications.[15] Such new dynamics of both institutional activities and inter-institutional competition will hopefully continue and profoundly change the deadlock that has existed for so long.

These institutional developments may make it easier to work on well-researched monographs on the communist period or, as a first important step, to inspire work on such projects. To be sure, no exact rule may be derived from one single brilliant example; yet it is worth mentioning, and not a mere coincidence, that, after each of the aforementioned new institutions had published two pertinent documents about the transformation of the swamp of Maliq into a communist show site of socio-economic progress, Artan R. Hoxha has recently made this the subject of an important monograph.[16] Everyday life and the spectrum of adaptions of individuals to and within the dictatorial ruling system—that, for the vast majority of persons ranged somewhere between the extremes of being either perpetrator or victim— deserve and need to be researched, such as Idrit Idrizi and Visar Nonaj have recently done in their important monographs.[17]

So, there is indeed reason to hope that we are about to witness a sharp increase of research efforts. Yet for the time being, and when considering the whole period of the last three decades since the overthrow of the old regime, the picture of historiography on Albanian communism cannot yet be painted in bright colours. For in sum, the analysis of the period remains fraught with difficulties and, until very recently, no specific research discipline on current history had been developed. Albanian communism has been poorly researched, not only in comparison to the Soviet Union and East Central Europe, but also vis-à-vis other Southeast European societies such as Bulgaria or Romania. The number of full-fledged monographs that deal with fundamental questions of Albanian communism and that are solidly based on archival sources plus the use of modern research methods and theories can still more or less be counted on two hands.[18] Quite tellingly, an important number of these monographs have not been written by scholars from research institutions in Albania, but by young Albanian researchers who started their career somewhere abroad. Source editions from the archives of the party, state institutions, or security services have also only recently begun in earnest.[19]

In a regional comparison with neighbour states, however, Albania is not so much an exception in that deplorable respect of lacking current historical research. Albeit for different reasons, research on communism is almost even more absent in the neighbouring post-Yugoslav countries of Northern Macedonia, Kosovo, and Montenegro, regardless of whether we look at the Albanian parts of their populations or at the non-Albanians. We should emphasise this point since communism in Albania itself has so often been singled out and exoticized by foreign observers. It is not at all advisable now to continue with this attitude when speaking of Albanian historiography, its development and prospects. Indeed, the case of Albania is less specific than one would think—not only but also in this respect. Albania shares with the three neighbour states just mentioned many common elements that structure the way the public sphere, including academia and historiography, may perform. First, there is the existence of a small intellectual elite whose training exerts a high degree of social control and pressures both themselves and others to conform to rigid parameters. Each country is also constrained by a tradition of strong centralisation of scientific research, confined to the capital cities, and there again only in narrow institutional environments built up only quite recently in each of the cases, that is, after 1944. At the same time, there has been and continues to be a high degree of oral knowledge in each of the four countries, which is also communicated orally rather than in writing. In other words: many people know a lot (or think they know) about how things once functioned in communist times—but hardly ever does someone put down on paper what he (thinks) he knows since it could cause personal trouble.

Microhistory studies, which would probably be most telling when it comes to the actual functioning of communist rule, could hardly be written under the circumstances that were present until very recently. Communist rule was all-pervasive, and with the countries and their populations being so small, almost everyone would know persons, relatives or neighbours whom he would not like to hurt. In Albania, at least until the most recent changes as sketched above, voices very critical of communism do exist, but they often derive from individuals who, as family members of former victims of the system,

struggle against marginalisation of their experience as they perceive it; their anger is fully understandable and needs to be uttered in public discourse, but it cannot substitute for sober and competitive research. What has occurred so far is rather a kind of public discourse on the communist past as turned into the politics of the day; in all four of these countries, this past is used for debates in the media rather than in academia, and very often in a sensation-oriented way that is singling out specific individual positions from the past.

It may be understandable, therefore, that even where departments of contemporary history officially exist in these countries' post-90s universities, they have so far mostly dealt with topics that are considered politically less dangerous, i.e., about which there is some consensus (and these are very few topics, indeed; the external relations of communist Albania represent one of the most obvious examples). As a rule, access to archives has also been deliberately denied or obstructed, in some cases up until this very day. This is not only true of the archives of the communist secret services (where the situation for Albania has been gradually changing since 2017, as seen), but also for the other security and oppression-related activities subordinated to the Ministries of Interior; their respective archives are still mostly inaccessible for research.

Albania, Northern Macedonia, Kosovo, and Montenegro also share the fact that historiography itself came into being only during the communist period. Thus few, if any, pre-communist alternate interpretations of national history existed as a point of reference for post-transition intellectuals, which is in stark contrast to 'older' post-communist countries such as Poland, the Czech Republic, Hungary, Romania, or nearby Bulgaria. Against this background, critical contemporary historical research could not develop with ease, particularly not at universities and the national academies of science, not the least because of academic elites long-lasting personal continuities with communist days. In Albania and its neighbouring countries, apart from the newest exceptions already mentioned, it has therefore been mostly small groups or individual intellectuals who are often not trained as historians who have tried to initiate a thoroughly critical debate on the recent past. In the case of Albania, the group working with the intellectual journal 'Përpjekja' deserves

particular mention.[20] These intellectuals have very often been confronted by strong and even aggressive resistance from the former communist nomenklatura and their successors. As a consequence, a coherent and broadly visible critical culture about how to remember communism has not yet been able to develop. It is very telling (and to be deplored) that official Albania still tries to suppress the communist penal camps as places of memory or to play down their significance. This continues to marginalise former detainees or political prisoners, both socially and symbolically denying them their place in official memory.

One second general observation about historiography that reaches beyond the borders of the region also deserves to be highlighted: the striving for comparative perspectives dominates international research on communism. Within this transnational context, historians working in Albania are so far almost virtually silent. From among the sovereign states of the communist era, only Albanian research institutions are glaringly absent in the ongoing international research debates. If Albania and its past are now becoming visible internationally to some extent, this is thanks to the aforementioned small group of young researchers who either work abroad or have only very recently returned from there to Albania.[21] In the context of comparative research on communism, however, their position is not easy. In addition to difficulties conducting and disseminating research at home, their analyses and conclusions will not always find a home in the dominant discourses and theories of communist and post-communist research amongst Western scholars.

In fact, as already briefly mentioned, a peculiar perception of communist Albania still flourishes amongst historians with little or no familiarity with Albanian history (that is, the vast majority of international scholars of communism): the idea of best regarding it as a special case, of a kind of 'abnormal' development if compared to other communist systems. In other words, Albania is quite often marginalized as a seemingly exotic case, comparable to North Korea, that can at best be used as a contrasting figure in footnotes positing it against the imagined 'mainstream' of communist regimes. Indeed, communist historiography is premised upon comparative models developed by Western historians, and

these models start from the Soviet Union as the norm or else from East Central European cases. How, then, is Albania, in all of its complexity, to be integrated into a thorough comparative framework? What is Albania to be compared with? Indeed, this problem of comparison extends to the Balkans more widely. With no consistent and systematic comparison of Balkan communisms, and with comparative studies of communism based on a spatially defined Soviet or 'Eastern European' norm, references to communism in the Balkans frequently serve merely as an annex to models that do not really describe Balkan experiences. It is thus not only Albania that is underrepresented in comparative communist (or, as numerous Western authors would prefer to say: state-socialist) historiography, but the whole Balkans as well.

The question of the usefulness of Western historiography's model is hardly ever raised, in part because Balkan historiographies often lack a self-reflective or reflexive critical interrogation of their conceptual frameworks. Most scholars have so far not seen the relevance of a specifically Balkan comparative framework and, therefore, prefer Albania to appear as self-referential and a purely national topic. To be even more explicit: while Albania and its communist system are not so exotic in a Balkan context (and could well be compared with other post-Ottoman states and societies during communism), a comparison between, say, Kavaja and Aussig/Ústí nad Labem in the Czech Republic or with Belorussian Białystok must almost necessarily lead to an emphasis on Albania's seemingly 'oriental' (exotic) character. Among the many consequences of this, the pervasive reduction of Albanian communism to a superficial psychologising and generalisation about 'Enverism' is particularly limiting. In contrast, a not-yet-written comparison of Kavaja with Struga, Aleksinac, Blagoevgrad or C l ra i in the same period would certainly make Kavaja appear much less of a 'peculiar case'. This frame of comparison, however, as said, is hardly ever used, either within or outside the Balkans.[22]

We want to summarize this point into a working thesis: the under-researched Albanian communism is to be understood primarily within a Balkan comparative framework—that is, as an Albanian version of a cross-regional endeavour to install a radical oppression-based modernizing dictatorship

on post-Ottoman soil. To make the working thesis most effective, Albania would therefore have to be compared with those other subregions where Ottoman rule lasted the longest, i. e. countries of the former Yugoslavia, Bulgaria, etc., and not primarily with countries such as Poland or the GDR.

We now touch upon a third problem that relates to a potentially important theoretical debate: that of totalitarianism. Many Western scholars of communism apparently find it difficult to regard communist rule and its implementation as in its essence a massively violent and criminal undertaking. This Western mainstream in general refuses to acknowledge the totalitarianism elements of communist dictatorships (as Hannah Arendt and others theorize totalitarianism). Rather, mainstream research prefers to speak of state socialism instead of communism (adhering to the communists' historical logic which reserved communism as an ideal to be reached in the future). Some authors in this vein flirt with a revisionist subtext that tends to deny or diminish the dictatorial character of communist rule. Indeed, there are authors who in all seriousness explore forms of socialist participation, socialist consumerism and socialist meaningfulness in order to compare these as equivalent to or maybe even superior to forms of participation and liberties in liberal democracies.[23]

In sharp contrast to Western frameworks that recuperate communism as state socialism, Albania offers considerable evidence of the other, totalitarian, component of communist rule. Those who fully reject such an understanding of communist rule might therefore be intellectually embarrassed by evidence from research on Albania. Simultaneously, the Albanian experience, similar to that of other Balkan communisms, also refutes the widespread two-phase model of interpretation which assumes that a dominant authoritarian-socialist consensus was rapidly reached in communist regimes after only a short violence-based first phase of the respective regimes. In this line of argumentation, a second, much longer, phase was characterised by a mildly authoritarian '(state-) socialism', by large-scale social equality and social security, full employment, various modes for individuals to participate in the society, by gender equality, and sufficient provisions for basic consumption. Inevitably, then, Albanian historians

in conversation with Western colleagues often would have to stress the totalitarian nature and practice of communist rule in the times of Enver Hoxha.

Albania is not the only country that refutes the benevolent model of 'state socialism' applied by many Western researchers today. Indeed, internment and prison camps existed until the 1980s, not just in Enverist Albania, but also in Bulgaria (which many would consider as a more 'mainstream' and milder form of communist rule). The collectivisation of agriculture was aggressively enforced in new waves in both Albania and Romania in the 1980s. Simultaneously, there was an extreme lack of food provision in both countries, which challenges studies of communist 'consumerism' that have become exaggeratedly popular in Western academia over the past years. Xenophobic nationalism, which some would regard as a very specific feature of the Albanian case, was in fact mobilised as a resource of rule in all communist Balkan countries during the 1980s. In Bulgaria, this even led to a broad campaign of forceful assimilation, starting in 1984 and culminating in the full-fledged expulsion of hundreds of thousands of Turks and other Muslims to Turkey in 1989. This turned out to be a dreadful omen of what soon afterwards would happen in many parts of the former Yugoslavia during the 1990s. Another form of oppressive rule that existed throughout the Balkans, particularly in Romania and Bulgaria as well as Albania, is patrimonial communism, i. e. the rule of clientelist networks linked by kinship or other common biographical background. As these cases show, Balkan communisms have important elements in common, and Albania is much less of a special case than is widely assumed.

Albanian Communism as Heritage and Burden

When communism collapsed in Albania thirty years ago—or when fragmentation and division within its own structures overthrew it (this is currently the subject of controversy)—the whole society was on the verge of exhaustion. More than four decades of totalitarian endeavours by the dictatorship had taken everything from many people, and in many parts of the country also from nature and its resources. After the early

break-up with Yugoslavia in 1948, the regime had let much of the modernisation of the economy be supported and financed by the two competing patronage powers of the communist world, first by the Soviet Union until the early 1960s and then by China until 1978. Contrary to older assessments, it can be assumed that the Albanian regime did not blindly copy those protectors when under their patronage and was in no way fully ideologically dependent on their practise. On the contrary, the Albanian leadership turned resolutely dogmatic, first vis-à-vis Moscow and then also vis-à-vis Beijing, even before the respective ties to both were broken.[24] The ideological consistency and earnest determination of Enver Hoxha and his surrounding group of leadership had indeed very serious consequences, from the break-up with the respective protectors and sponsors to the final decision to assert and defend, as the only remaining Stalinist country in the world, the one real and 'correct' communist doctrine against all kinds of supposed traitors and 'social-revisionists' (as the other communist regimes ended up being branded by official Tirana).

This dogmatic ideology was imposed with the price of isolating the country from 1978 onwards. Accordingly, the period after the break-up with China developed into a period of particular extremes: extreme militarisation of the population as a means of maintaining rule; extreme isolation from the outside world (which can again be considered as a means of maintaining rule); extreme mobilisation of xenophobic nationalism; extreme autarky policy; extreme struggle against private property, including the further intensification of factual collectivisation of agriculture (by a further reduction, in 1980/81, of the remaining garden-like small plots where peasants were allowed to work for self-sufficiency or their own profit); extreme exclusion of people with a so-called 'bad biography'; extreme isolation of the ruling network of interrelated families accompanied by extreme paranoia and the exercise of violence in the inner circle of leadership. While it is crucial that scholarship de-fetishize communist Albania as a 'unique' case, in particular in its formative years, it is also true that, after 1978, Albania and its communism may indeed be seen as taking a different road in response to global movements (the civil and human rights movements

in particular, as represented by the Helsinki Accords and the Helsinki Final Act, which Albania alone refused to sign). And yet, all these aspects were nothing but an intensified version of what were in principle common elements to all communist regimes during the global 'century of extremes'. When isolationism was instituted, Albania was led by an increasingly sick, but still violently powerful, distrustful and paranoid, dictator who was then under the growing influence of his wife Nexhmije. From that later period until Hoxha's death in 1985, the regime may be regarded as an example of patrimonial communism of a totalitarian kind.

In economic and socio-economic terms, the policy of autarky and self-isolation caused the steady collapse of industry and other resources, which led to Albania's rapid deindustrialisation after 1991 and the un-doing of almost everything the communists had tangibly achieved with their resource-consuming industrialisation initiatives. Until the collapse, the industrial equipment (in large part still what had once been imported from or donated by the Soviet Union or China) was outdated, spare parts were lacking, and the country was disconnected from technological developments. Much of the industrialisation and urbanisation had been achieved at the detriment of the rural majority of the population. The forced reclamation of arable land to feed the rising population, for example through terracing, only accelerated wide-spread land erosion in the long term. The extraction of petroleum and other mineral resources had turned whole landscapes into wounds of nature.

Even deeper, however, were the psychological wounds inflicted on individuals that are difficult to measure by quantitative scholarship. Albanian totalitarianism had striven for, and largely achieved, penetration of the capillaries of society and of Albanian traditional values, in particular within families. The potentially omnipresent *Sigurimi* had silenced the people and caused many parents to even fear their children and vice versa. Except for the nomenklatura who profited from the system and some intermediate, mostly urban, sectors of the population, Albanian society had to accustom itself to fear and poverty and to existing in a climate of repression and spying that was applied even within the nomenklatura itself. To leave the country was impossible for

almost everyone in almost every respect. Internally, freedom of movement was also severely restricted. This was especially true for the rural population, which was not allowed to migrate to towns and cities unless they were granted individual permission. Permission to travel during their spare time was even frequently denied. Admittedly, in this way the government thus prevented the excessive rapid urbanisation seen in other communist countries of the region, as well as in a non-communist neighbouring country such as Greece. But many people simply felt trapped, and with good reason: especially in the border areas, they were faced with armed checkpoints severely restricting their movements, frequently in direct proximity to the last house of their village; and, if they tried to leave the country (that is: to flee), they faced the deadly danger of military-guarded borders.

In retrospect, the communist state does not only appear as a strong state. Its presence was as 'total' as it was brutal, where the Party and respective decision-makers applied brutal force when they deemed it necessary. Originally, the communist leadership had certain reasons to react to the fragility of statehood as established between 1920 and 1939, as they had reason to react to the experience of two decades of foreign occupation. But in pursuit of its ideology and its aims to achieve undisputed and undisputable rule, the one-party state exercised extreme cultural and social homogenisation, political control, and physical exclusion of any possible competitors, regardless of whether that sort of competition was real or imagined. Marxist ideology justified these extreme measures and must be taken into serious consideration in analyses of the regime's actions. Educating and forming the socialist 'New Man' was the state's explicit aim, and Albanian public discourse was saturated with the ideological semantics indoctrinating the people.[25] While the communist state ruled through coercion and fear, it also offered prospects of social mobility, of careers and privileges to those who would conform to its ideology. But, when economic prospects worsened and the grip of repressive fear was loosened—that is, after Hoxha's death in 1985—the system could not be maintained. Collapse occurred, with some delay if compared to the other communist regimes outside the Soviet Union, but still relatively quickly after the regime changes in Eastern Europe. Isolation could neither prevent this or go on for ever.

The key element of the last stages of the regime was the withering away of the ruling force against tides it could no longer control. At this point, we will turn here only to the most visible effect of collapse: migration. The previously extremely limited possibility for spatial mobility now drove thousands of Albanians into chaotic attempts to flee, and, within a few months after, into full-fledged floods of mass emigration. For many years, the events related to this mass exodus shaped Albania's image abroad: the storming of Western embassies in July 1990 (with the Federal German Embassy in the forefront of events);[26] the flight on completely overloaded ships to Italy in March 1991; the simultaneous mass exodus by foot across the mountains to Greece (not rarely followed by almost equivalent mass repatriations). But all too often overlooked, at least by outside observers, is the massive internal migration within Albania that was also unleashed once the political dams had broken. This process took a longer time, but left much more visible traces upon the country than the movements across state borders. Villages in the mountains vastly emptied and migrating populations created, first, a set of settlements, and finally a whole single continuous settlement zone in the plain between Durrës and Tirana. The differences in development between that metropolitan region and the mountainous areas have deepened more and more in the last thirty years. The urbanisation previously prevented by the communists now expanded rapidly and without planning or systematization; rather, it was defined by individuals striving for opportunities and by the (dis)opportunities offered by the lack of rules and of rule of law.

Similar to other countries with entrenched post-communist structures (Bulgaria, Romania), Albania plunged into a deep crisis within a few years after the regime change. The climax of the crisis occurred with the 1997 economic collapse when, as many readers will remember, the state virtually imploded in most parts of the country. Widespread civil war-like conflicts erupted, whole regions drifted apart, and, for several months, people existed without a state and in conditions of ad-hoc rule over extremely small territories. The coercive Enverist state, or what had remained of its institutional heritage, was now literally smashed to pieces by the citizens: state buildings and infrastructure were

devastated and looted. In some respects, Albania reverted to the early 1920s, with its population living in a state that had an existence on the international map but no longer had a functioning government nor administration and was only with great reservation accepted by many of its citizens.

When the communist state first collapsed in 1991, state properties were massively plundered and hundreds of kilometres of eucalyptus alleys alongside the country roads were clear-cut. Similarly, in 1997, Albanians exploded in rage, exposing the mistrust, and sometimes hatred, that many felt towards the political system and the state. Even though the Democratic Party was in power in 1997, Albanians by and large understood the vast degree to which any government embodies the legacy of the coercive communist state. The state implosion also had the crucially important effect of temporarily abolishing the state's monopoly on the use of force, which had already become fragile after 1991. Tens of thousands of weapons came into circulation (within the country and into Kosovo). Above all, however, criminal structures were strengthened, which, in the midst of the power vacuum left by the imploded state, were all the more able to turn Albania into a hub of organised crime. As in the formative days of the Albanian state (1912-1914), foreign countries then intervened to preserve and to stabilise Albanian statehood, albeit in and for their own interests, as exemplified by the Italian military operation. This time, however, international intervention was quite energetic, resource-intensive and astonishingly effective.

The Albanian state survived, and has strongly recovered during the years since then, even though some of the damage to the political system, culminating with the crisis of 1997, has not so far been repaired. The most notable evidence for this point is the ongoing political polarisation between the two major parties, the socialists and the democrats. Politics also has remained highly personalised to the present day, being centred around political leaders who cater to their respective patronage systems. Up until 2021, it still has not become customary practice in Albania to accept electoral defeat. Opposition is often still understood as and marked by obstruction, while the government is far from being attached to the idea of democratic compromise instead of taking profit

from using and abusing its power. Both factors weaken public and state institutions of all kinds. To be sure, current Albania is certainly much more thoroughly de-Ottomanized than it was in pre-communist times, and communism contributed to the ongoing process of de-Ottomanization. After 1991, new ties stemming from the vast numbers of emigrants to Greece and Italy and (mostly in more recent years) new and better road infrastructure have led to a continuing mediterraneanization of every-day life and to cultural orientations following the steadfast Westernization of Albanian foreign policy. Nevertheless, Albania today is still in some ways reminiscent of the interwar period, particularly in that Albanians are faced with new forms of rising authoritarianism, laboriously consolidated in recent years, with limited leeway for the opposition.

In terms of foreign policy, however, the break with pre-communist and even more so with communist traditions is more than impressive. As already stated in the introduction to this essay, Albania is now included in a multilateral alliance system (NATO), in stark contrast to the bilateral dependencies of the interwar years and the early communist period. Yet in other fields of policy Albania, not unlike Serbia, is compensating for the current weakness of the European Union and the dwindling prospect of full membership in the EU (at least in the foreseeable future). Most notably, it is diversifying its partners, currently by intensifying relationships with Turkey and China. While seeking the favour of more or less financially potent protectors is not new in Albanian history, a profound new development is emerging before our eyes: demographic growth has slowed down and demographers expect a decline in the Albanian population in the coming decades, even if emigration comes to a halt. And, according to surveys, the willingness to emigrate remains high.

In conclusion, thirty years after the end of communism, Albania and its society remain fragile. State institutions are still weak, as are legal security and free media. In a world increasingly defined by knowledge production, Albania suffers from a weak school and scholarly system. But perhaps above all, Albanian elites find it difficult to convince their citizens that their long-term future lies within the country. Through

the networks of their diaspora abroad and through social media, Albanians can now easily compare political practises and their effects. While diaspora networks have helped other countries to build their home-state's capacity, the Albanian diaspora has been unable to contribute to strengthening democracy and the rule of law in Albania itself. Within the country, the ruling elites are certainly not interested in systemic change, and the citizens have been unable to force change.

The EU has largely lost interest in this small Balkan country, except to the extent that they are competing with non-European actors for cultural primacy in the region. Similarly, it has little interest in what the Albanian political elite may do in terms of living democracy. It is thus not without historical irony that the elites of the Republic of Albania are most likely to face trouble from an unexpected corner in the time to come. That trouble may derive from the development in the factual new second Albanian state, from Kosovo. There, despite all difficulties, it was possible to achieve a change of power in the elections in 2019 and in early 2021. No similar change in government, as brought about by elections and then widely accepted by the competing parties, has so far been managed by the political system of Albania.[27] One possible outcome may be a reversal of who sets the dominant political tone among the Albanians across the borderlines that were sketched onto the map in 1912/13[28]: since then, Albanian politicians from everywhere have regarded the Republic of Albania as the motherland and thus as the institutional role model all Albanians were expected to devotedly turn to and follow. In the future, we will perhaps quite soon witness the second Albanian state to claim this role in one way or the other.

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[1] *Hobsbawm, Eric*: The Age of Extremes: A History of the World, 1914–1991. New York: Pantheon Books, 1995, p. 2–17.

[2] In terms of scholarly apparatus, the authors have decided to apply a double approach: for all the periods treated here, the final endnote shall serve to provide an introduction to the most essential research literature; whereas our specific focus on historiography on the communist period is summarized in endnotes referenced in the respective parts of the essay.

[3] The peculiarities of Albanian communism should not be overemphasized though, at least not before the period of isolationism after 1978. Marxist ideology needs to be taken seriously in order to understand the new system (compare further below endnotes 23–24). While traditional supra- or antireligious characteristics of Albanian nationalism (and xenophobia) did play a role, and are needed to explain most importantly the harshness of anti-religious policies in communist Albania and some of the argumentations in favour of self-isolation, the argument once developed by Bernhard Tönnes that Albanian communism should best be primarily interpreted in continuity with the late 19th century national movement 'Rilindja' can no longer claim validity. But it turned into an important approach within Western (and specifically West German) Albanian studies at the time of communism and still deserves some analytical attention. For more on this, see *Tönnes, Bernhard*: Sonderfall Albanien: Enver Hoxhas 'Eigener Weg' und die historischen Ursprünge seiner Ideologie. München: Oldenbourg, 1980. For a quite different methodological approach and as a comparative analysis of the early period, see *Kaba, Hamit*: Komunizmi Shqiptar: Ngjashmëri dhe Veçori me Vendet e tjera Komuniste të Evropës Lindore e Qendrore, 1944–1948. In: Boçi, Sonila (ed.): Të Mohuar nga Regjimi: Burgjet, Sistemi i Internim–Dëbimeve dhe Puna e Detyruar në Shqipëri në, 1945–1990**.** Tiranë: Studime Historike, Konferenca Ndërkomëtare Shkencore, 2018/ Volume 3, number 4, p. 7–19.

[4] Compare the commemorative volume as discussed in a special session of the parliament 70 years after those events, 'Deputetët për Deputetët' 10 tetor 2017, 70: vjetori i Ekzekutimit të Deputetëve Opozitarë. Tiranë: AIDSSH, 2017. https://issuu.com/aidssh/docs/deputetet_per_deputetet/s/38866 (last accessed: 2 March, 2024). Apart from being a valuable documentation of the speeches in Parliament that day (including speeches by Prime Minister Edi Rama and opposition leader Lulzim Basha from the PD), the volume includes a scholarly analysis of the internal and international implications by *Boçi, Sonila / Hamit, Kaba*: Deputetët Opozitarë përballë 'Ndërtimit të Shtetit të Diktaturës se Proletariatit'. In: Boçi, Sonila (ed.): Të Mohuar nga Regjimi: Burgjet, Sistemi i Internim–Dëbimeve dhe Puna e Detyruar në Shqipëri në, 1945–1990. Tiranë: Studime Historike, Konferenca Ndërkomëtare Shkencore, 2018/ Volume 3, number 4, p. 94-129. Compare as source edition the two large volumes published by the ISKK: *Ndoja, Leka (ed.)*: Gjyqi i Grupit të Deputetëve, Volume 1 (1947) and Volume 2 (1947–1948). Tiranë: ISKK, 2016.

[5] For edited Soviet documents (in Albanian translation) from the period before, see *Kaba, Hamit / Çeku, Ethem (eds.)*: Shqipëria dhe Kosova në Arkivat Ruse, 1946–1962. Prishtinë: Brezi, 2011, p. 81.

[6] Compare *Boriçi, Gjon:* Marrëdhëniet Shqiptaro: Kineze në Luftën e Ftohtë, 1956–1978. Tiranë: Botimet Albanologjike, 2016; *idem. (ed.)*: *Shqipëria dhe Kina: Marrëdhënie e ngushtë në* Sfondin e Luftës së Ftohtë, 1954–1978. Tiranë: Botimet Albanologjike, 2020; and the monograph by *Krasniqi, Afrim*: *Kriza e Ambasadave: Shqipëria në Vitin 1990.* Tiranë: Botime Albanologjike, 2020.

[7] As analysis of the economic policies of the early years and the role of confiscation of property (for the example of gold property), see *Saraçi, Alvin*: Konfiskimi i Pronës dhe Grabitja e Arit, 1944–1955. Tiranë: ISKK / West Print, 2012. For the last phase of 'deprivatisation' in the countryside compare *Sadikaj, Dilaver:* Masat për Zhdukjen përfundimtare të Pronës Private në Fshat, Nëntor 1980–1983. In: Studime Historike, 1997 / Volume 1, number 4, p. 61–77.

[8] *Sufaj, Femi*: Sistemi i Ndëshkimeve në Shqipëri gjatë Regjimit Komunist, 1944–1990. Tiranë: Dita 2000, 2014.

[9] *Dervishi, Kastriot*: Burgjet dhe Kampet e Shqipërisë Komuniste, Një histori Treguese e gjithë Vendeve në të cilat Diktatura Komuniste Persekutoi dhe Shfrytëzoi Punën e të Burgosurve dhe të Internuarve. Tiranë: Instituti i Studimit të Krimeve dhe Pasojave të Komunizmit, 2015. The contributors to the substantial edited volume *Boçi, Sonila (ed.)*: Të Mohuar nga Regjimi treat important related topics. For insight into the meaning of the camps for the relationship between the state (the Party's rule), the legal system and the individual, see *Meta, Beqir / Frashëri, Ermal*: Framework Study: On the Prison System, Internment and Forced Labor during the Communist Regime in Albania with a Focus on Establishing a Museum of Memory in the Former Internment Camp in Tepelena. Tiranë: Autoriteti për Informimin mbi Dokumentet e Ish–Sigurimit të Shtetit, 2019. https://www.undp.org/sites/g/files/zskgke326/files/migration/al/Framework-Study-for-web.pdf (last accessed: 28 February, 2024). Also available in Albanian, this book suggests directions for further research.

[10] Compare *Meksi, Aleksandër*: Sigurimi i Shtetit dhe Arkivat e tij, 2006. http://www.aleksandermeksi.al/sigurimi-i-shtetit-dhe-arkivat-e-tij/, for an outstandingly informative essay on functions of and within Sigurimi and description of the formal structures at the site of the current secret service of Albania (where the less formal subordination to the Party is not sufficiently mentioned). Written in 2006 by the first democratic post-1992 Prime Minister.

[11] International research on socio-economic aspects of communist societies has a stunning tendency to follow (consciously or not) the priorities once set by the communist regimes themselves, which leads to an over-emphasis of industries and industrialization to the detriment of non-urban research topics. In the case of Albania, the tremendous lack of scholarly analyses of the countryside in communist years is equivalent to neglect of the social conditions of the majority of the country's population, which was rural. Given this, a contemporary (or almost contemporary) study by the German economist Andreas Wildermuth retains even more importance for the subject: Die Krise der albanischen Landwirtschaft: Lösungsversuche der Forstwirtschaft. In: Grothusen, Klaus-Detlev (ed.): Südosteuropa–Handbuch: Albanien. Göttingen: Vandenhoeck & Ruprecht, 1993, p. 343–375; and with regard to Albanian collectivization, *Sjöberg, Örjan*: 'Any other Road Leads Only to the Restoration of Capitalism in the Countryside': Land Collectivisation in Albania. In: Iordachi, Constantin / Bauerkämper, Arnd (eds.): The Collectivisation of Agriculture in Communist Eastern Europe: Comparison and Entanglements. Budapest, New York: CEU Press, 2014, p. 369–397. A few local or regional studies may also be valuable, such as a book on agriculture in the Vlora area by *Mita, Ejup*: Bujqësia e rrethit Vlorë në Vitet 1945–1990. Vlorë: Triptik, 2015. Ejup Mita is not a historian, and this study was not at our disposal. The same is unfortunately true for *Manoku, Yllson*: Historia e Bujqësisë dhe Agropërpunimit në Rajonin e Korçës. Pogradec: DIJA Poradeci, 2009.

[12] As said, the Institute is a public institution, but seemingly it did not enjoy undisputed or sufficient financial backing by the Government. At any rate, quite a few of its projects were helped by and, as one may assume, to some degree dependent on, substantial support by the Konrad-Adenauer-Stiftung Foundation.

[13] Unfortunately, it seems that most of the publications by the ISKK did not reach Albanian book shops and were therefore hampered in reaching the national reading public. For the same reason, those publications are only rarely found in international research institutions or other major libraries. It is therefore noteworthy that a considerable part of that stock may be found in the Vienna-based library of the Albanien-Institut e. V. For an overview (albeit rather cumbersome) of what has been published from among the research-related series so far, see the studies and memorials available online through the Instituti i Studimeve për Krimet dhe Pasojat e Komunizimit https://www.iskk.gov.al/kolana-studimore-2/ (last accessed: 28 February, 2024) and https://www.iskk.gov.al/kolana-e-memuaristikes-2/(last accessed: 28 February, 2024).

[14] Understandably, since they started only in 2017, their number has remained limited so far. It deserves specific praise that seemingly all of them are under open access at the Autoriteti për Informimin mbi Dokumentet e ish-Sigurimit të Shtetit at http://autoritetidosjeve.gov.al/botime-aidssh/ (last accessed: 28 February, 2024).

[15] This development is very much to be appreciated; yet it is also a significant indicator of the strong and long-standing difficulties of starting thorough research on the topic that, since the regime-change of 1991, this Institute, which is the main institutional pillar of Albanian historical sciences, has entered the scene only so belatedly. For recent results, compare endnote 18 for the substantial edition of sources on communist cultural policy started in 2018; compare also *Boriçi*: Marrëdhëniet Shqiptaroa; *Boriçi (ed.): Shqipëria dhe Kina*; and *Krasniqi*: *Kriza e Ambasadave*.

[16] Compare *Hoxha, Artan R.*: Tharja e Kënetës së Maliqit dhe Ndërtimi i Regjimit Komunist në Periferi të Shqipërisë. Tiranë: Onufri, 2021. For the two related text editions, see *Autoriteti për Informimin mbi Dokumentet e ish-Sigurimit të Shtetit*: E Vërteta e Inxhinierëve të Kënetës së Maliqit: Botim me Rastin e 71 Vjetorit të Ekzekutimit të tyre. Tiranë: AIDSSH, 2018; and (albeit not available to the authors at the time of this writing) *Leka, Ndoja (ed.)*: Gjyqi i Grupit Tekniko–I ntelektual, 1946 (Procesi i Maliqit). Tiranë: ISKK, 2017.

[17] *Idrizi, Idrit*: Herrschaft und Alltag im albanischen Spätsozialismus. Berlin, Boston: De Gruyter Oldenbourg, 2018; and *Nonaj, Visar:* Albaniens Schwerindustrie als Zweite Befreiung? 'Der Stahl der Partei' als Mikrokosmos des Kommunismus. Berlin, Boston: De Gruyter Oldenbourg, 2020.

[18] Apart from the titles already referred to by Hoxha, Idrizi, and Nonaj, compare in the final endnote for this chapter the monographs by *Mëhilli, Elidor*: From Stalin to Mao: Albania and the Socialist World**.** **I**thaca, London: Cornell University Press, 2017; *Nikolla, Albert P.*: Njeriu i ri Shqiptar: Ndërmjet Moralit Komunist dhe Krizës së Tranzicionit. Tiranë: Onufri, 2012; and *Vehbiu, Ardian*: Shqipja Totalitare: Tipare të Ligjërimit Publik në Shqipërinë e Viteve 1945–1990. Tiranë: Çabej, 2007. Additionally, we are indebted to another monograph for a case study on the relationship of the regime and religious communities by *Hoxha, Artan R.*: Kisha Ortodokse nën Komunizëm: KOASh–i dhe Regjimi Diktatorial Shqiptar, 1945–1967. Tiranë: UET Press, 2017**.** Hamit Kaba treats the early Cold War era and communist international policies in an analysis of the history of the United Nations Relief and Rehabilitation Administration in *Kaba, Hamit*: UNRRA në

Shqipërinë, 1944–1947. Tiranë: Shtëpia Botuese 'Shkenca', 2000. While not mainly based on fresh archival material and in spite of remaining somewhat close to the communist framework of interpretations, the economic history by Iljaz Fishta and Mihal Ziu also deserves to be mentioned: *Fishta, Iljaz / Ziu, Mihal*: Historia e Ekonomisë së Shqipërisë**.** Tiranë: 'Dita', 2004. While not available for us when writing this essay, we should also mention the books by Dyrmishi Demir: *Demir, Dyrmishi:* Punëtorët ne Shqipëri, 1944–1960. Tetovë: Album, 2002, and *Demir, Dyrmishi:* Lufta Politike në Udhëheqjen e Partisë Komuniste Shqiptare (PPSh), 1944–1960. Tiranë: Toena, 2011. The latter discusses frictions and factions within the Party leadership for the same early period. For three other relevant book titles, also compare *Boriçi*: Marrëdhëniet Shqiptaro; *Boriçi*: *(ed.)*: *Shqipëria dhe Kina*, *Krasniqi*: *Kriza e Ambasadave*; *Saraçi*: Konfiskimi i Pronës dhe Grabitja e Arit; and *Sadikaj*: Masat për Zhdukjen përfundimtare të Pronës Private në Fshat.

[19] Most noteworthy seems to be (apart from the institutional activities as referred to above) a source edition that was started for the Historical Institute at the Albanological Academy: *Meta, Beqir / Krasniqi, Afrim / Bello, Hasan (eds.):* On Communist Indoctrination and Politics in the Cultural Sphere. In: Indoktrinimi Komunist përmes Kulturës, Letërsisë dhe Artit. Dokumente Historike, Volume 1 (1945–1968). Tiranë: Emal, 2018. At the time of this writing, this reference was accessible to the authors only with regard to the comprehensive pages with table of contents of its 89 documents supplied to open access by the Bayerische Staatsbibliothek (Munich). Also already published, but fully inaccessible to the authors, were the following even more voluminous volumes of that series: the 2019 Volume 2 (1969–1973), and the 2020 Volume 3 (1974–1976). As to cultural history and the limits set to scholarly institutions and individuals by communist rule, the memoirs by two linguistical Albanologists (published by the ISKK), also deserve special attention: *Beci, Bahri*: Një Libër që nuk do doja ta Shkruaja: Mbresa, Kujtime, Meditime. Tiranë: ISKK, 2013; and *Topalli, Kolec*: Një Jetë me Brenga: Kujtime**.** Tiranë: ISKK, 2018.

[20] Compare the special issue of *Perpjekja* from 2014: *Lubonja, Fatos / Vorpsi, Irida / Idrizi, Idrit*: Studime Aktuale dhe Perspektiva të Reja për Historinë e Shqipërisë në Shekullin XX. For additional interesting examples (while stemming from a somewhat different perspective and experience) of such productive efforts by intellectual authors coming from outside professional historiography, also compare *Bytyçi, Enver*: Shqipëri: Kinë. Deshtimi i një Bashkëjetëse: Historia i Marrëdhënieve midis Tiranës e Pekinit gjatë Periudhës së Komunizmit. Tiranë: Instituti i Studimeve të Europës Juglindore, 2014; and two other books on the China issue by Gjon Boriçi, *Boriçi*: Marrëdhëniet Shqiptaroa and *Boriçi (ed.): Shqipëria dhe Kina***.**

[21] It can certainly be appreciated, though, that Albanian scholars from within the institutions have recently developed an increasing interest in comparative perspectives on communism and on how to tackle this past. As some examples, compare the pertinent contributions in the volume from the 2018 conference in *Boçi* (ed.): Të Mohuar nga Regjimi, namely: *Këlliçi, Klejd:* Gulagu Europian: Regjimi i Kampeve të Punës dhe Përqëndrimit në Shqipëri, Gjermani Lindore dhe Bullgari, 1946–1950. ibid., p. 20–37; and *Krasniqi, Afrim:* Trajtimi i të Kaluarës në Raport Krahasues: Shqipëria dhe Evropa Lindore, ibid., p. 38–61. In time,

this new interest on the part of Albanian researchers may hopefully also bear fruit amongst non-Albanian researchers on communism who are, of course, also very often hampered in better understanding the Albanian case because of the widespread lack of knowledge of Albanian (whereas Slavic language literature has the advantage of reaching international scholarly networks much more easily).

[22] As at least one exception to this rule (and stressing the potential value of such intra-Balkan comparative approach), compare *Brunnbauer, Ulf / Raeva, Biljana / Nonaj, Visar:* Workers, Steel Factories and Communism: Labor in Kremikovci (Bulgaria) and Elbasan (Albania) under State Socialism. IOS Mitteilungen, 62. Regensburg: Institut für Ost- und Südosteuropaforschung, July 2013. https://nbn-resolving.org/urn:nbn:de:0168-ssoar-63250-3 (last accessed: 28 February, 2024).

[23] This critique of ours is not to dismiss the promises of social mobility made by the Party's policies and institutions, and partly kept, to some strata of the population, specifically within the industrialization policy (as treated in the case of Maliqi by Artan Hoxha or as taken into consideration by other researchers such as Visar Nonaj). These analyses are important to understanding the relative stability and the local logics of communist rule.

[24] For the example of first the Soviet and then the Chinese alliance, compare the monograph by *Mëhilli*: From Stalin to Mao; chapter two of *Bytyçi, Enver*: Shqipëri: Kinë. Deshtimi i një Bashkëjetëse: Historia i Marrëdhënieve midis Tiranës e Pekinit gjatë Periudhës së Komunizmit. Tiranë: Instituti i Studimeve të Europës Juglindore, 2014; and from among the older Western policy analyses during the communist period, *Nikolla, Albert P.*: Njeriu i ri Shqiptar: Ndërmjet Moralit Komunist dhe Krizës së Tranzicionit. Tiranë: Onufri, 2012. Compare also publications from the *Autoriteti për Informim mbi Dokumentat e ish-Sigurimit të Shtetit* at http://autoritetidosjeve.gov.al/botime-aidssh/.

[25] Two important monographs need to be singled out in this respect: *Krasniqi, Afrim*: *Kriza e Ambasadave: Shqipëria në Vitin 1990.* Tiranë: Botime Albanologjike, 2020; and *Nikolla*: Njeriu i ri Shqipta**r**. The last chapter of the latter is devoted to the repercussion of the ideological strife after 1991, and the main part of the book provides a detailed study of the communist ideological strategies to achieve the 'New Man'.

[26] The 'embassies' crisis' is now put into a broader background perspective by *Krasniqi: Kriza e Ambasadave*, as referenced in the previous note.

[27] At least, as long as no new Trump-like US-government resurfaces to again interfere into the internal Kosovar political scene, we can assume that the Kosovar political parties' acceptance of the people's will as expressed in the elections will stand.

[28] More recent analyses and introductions to the Albanian 20th century are offered by *Schmitt, Oliver Jens:* Die Albaner: Eine Geschichte zwischen Orient und Okzident. Munich: C. H. Beck, 2018 (also translated as Shqiptarët: Një Histori midis Lindjes dhe Perëndimit. Tiranë: T & K, 2012). For a lengthier study, see *Duka, Valentina*: Histori i Shqipërisë, 1912-2000. Tiranë: Shtëpia Botuese 'Kristalina-KH', 2007. In time, the detailed new collected volumes begun by the Historical Institute of the Academy for Albanological Studies under the guidance

of its director Beqir Meta will replace the earlier reference works presented by the Albanian national historiography for the 20th century: *Meta, Beqir (ed.)*: Historia e Shqiptarëve gjatë Shekullit XX**.** 3 vol. Tiranë: Botimet Albanologjike, 2017–2020. So far published are Volume 1 (1912-1919), Volume 2 (1920-1924), Volume 3 (1924-1939), and Volume 4 (1939-1944).

A discussion and overview on historiography (both Albanian and on Albania) is provided in the edited volume of *Schmitt, Oliver Jens / Frantz, Eva Anne (eds.)*: Albanische Geschichte: Stand und Perspektiven der Forschung. Munich: Oldenbourg, 2008 (translated as Historia e Shqiptarëve: Gjendja dhe Perspektivat e Studimeve [Tiranë: Bot. Përpjekja, 2012]). Additionally, for the Albanian perspective on the Ottoman legacy, and for approximately the same time period, see *Egro, Dritan*: Historia dhe Ideologjija: Një Qasje Kritike Studimeve Osmane në Historiografinë Moderne Shqiptare—Nga gjysma e dytë të shek. XIX deri me Sot. Tiranë: Instituti i historisë, 2007.

For the factual legacy of the Ottoman Empire in the Albanian area, one can safely turn to *Gawrych, George W.***:** The Crescent and the Eagle: Ottoman Rule, Islam, and the Albanians, 1874-1913. London: I. B. Tauris, 2006. The difficult circumstances and processes of (intellectual) nation-building in the late Ottoman period, from 1856 to 1912, are treated by *Clayer, Nathalie*: Aux origines du nationalisme albanais: La naissance d'une nation majoritairement musulmane en Europe. Paris: Karthala, 2007 (translated as Në Fillimet e Nacionalizmit Shqiptar: Lindja e një Kombi me Shumicë Myslimane në Evropë [Tiranë: Bot. Përpjekja, 2009]). For the following early period of Albanian statehood, the translated edition (with no published French equivalent) of Justin Godart's travel narratives, written from the point of view of an important French peace activist and politician of the period, provides for interesting and knowledgeable insight by a foreigner on the vast social and political transitions from 1921 to 1951. See *Godart, Justin*: Ditarët Shqiptarë: Shënimet e Udhëtimeve nga Marsi 1921 deri në Dhjetor 1951. Tiranë: Dituria, 2008. Also of great value for the Zogu period are *Schmidt-Neke, Michael*: Entstehung und Ausbau der Königsdiktatur in Albanien: Regierungsbildungen, Herrschaftsweise und Machteliten in einem jungen Balkanstaat. München: Oldenbourg, 1987 and *Fischer, Bernd J.*: King Zog and the Struggle for Stability in Albania. New York: Columbia University Press, 1984. The political and social repercussions of the close but quite often uneasy relations with Turkey as successor of the Ottoman Empire are comprehensively studied by *Bello, Hasan*: Marrëdhëniet Shqiptaro-Turke 1912-1939. Tiranë: Botimet Albanologjike, 2015. Social change, as reflected by the position of women and of urban family structures, is the subject of *Musaj, Fatmira*: Gruaja në Shqipëri, 1912–1939**.** Tiranë: Akademia e Shkencave, 2002; and of the recent book by *Pandelejmoni*, *Enriketa:* Shkodra: Family and Urban Life, 1918–1939. Graz: Lit Verlag, 2020. For the history of the Second World War and its immediate aftermath, one is excellently served by a seminal study that does not only treat the topic of the territorial expansion of Albania of those days, but also highlights the general situation (that used to be a political and historiographic battlefield in communist times and after) in a very convincing manner: *Gurakuqi, Romeo*: Shqiperia dhe Tokat e Lirueme, 1939–1946, 2 vol. Tiranë: Botimet Jozef, 2018.

For the communist period, despite the many dark spots yet thoroughly researched until this very day, one still needs to pay tribute to the voluminous reference work assembled by *Grothusen, Klaus-Detlev (ed.)*: Albanien: Südosteuropa-

Handuch, vol. 7. Göttingen: Vandenhoeck & Ruprecht, 1994. This work provides a great deal of factual information, from economy to politics and foreign policies and beyond. A similar tribute (albeit for the somewhat narrower but still large field of political and human geography, and with fewer references to Albanian sources than in the former title) shall be paid to *Hall, Derek*: Albania and the Albanians. London, New York: Pinter, 1994. Both titles deal mainly with the communist period of Albania, much more so than with the following first years of transition. Among newer research, the collected volume of *Boçi, Sonila (ed.)*: Të Mohuar nga Regjimi: Burgjet, Sistemi i Internim–Dëbimeve dhe Puna e Detyruar në Shqipëri në, 1945–1990. Tiranë: Studime Historike, Konferenca Ndërkomëtare Shkencore, 2018/ Volume 3, number 4, is to be singled out for the comprehensiveness of social and political aspects treated that ranges far beyond what is proposed by the title of the book. Also noteworthy for its in-depth contribution to a case of international relations is the recent edited volume (with focus from 1961 to 1978) gathered by *Rago, Paolo (ed.):* Gli anni della Distensione: Le Relazioni Italiano-Albanesi nella Fase Centrale della Guerra Fredda. Roma: Editori Laterza, 2019. This work covers not only diplomacies, but also intra-communist relations, Italian perspectives of the antireligious policy in Albania, and the history of the political emigration from communist Albania.

Amongst the autobiographical sources on the communist period, we wish to single out two particularly impressive examples written from a North-Albanian experience and in the literary Gheg variant: *Pllumi, Zefl*: Rrno vetëm për me Tregue**.** Shkodër: Botime Françeskane, 2006; and *Repishti, Sami*: Nën Hijen e Rozafës: Narrativë e Jetueme. Tiranë: Onufri, 2004. Both authors became victims of the regime, with Father Pllumi spending long years in prison for being a Catholic priest, and Repishti, after some years of imprisonment, being forced into emigration in 1961 to Yugoslavia and then to Italy and to the USA. Repisthi's memoirs may also be taken as one voice from the small, but intellectually important, political emigrés.

Among monographs, an interesting example of interpretation of Albanian communism, mostly along the lines of specific Albanian social structures and nationalist heritage, is given by *Rago, Paolo*: Tradizione, Nazionalismo e Comunismo nell'Albania Contemporanea. Rome: Nuova Cultura, 2011. The book is rather short though, and the chapter on communism and national(ist) thought is just one chapter of little more than 80 pages. The book by *Tönnes, Bernhard*: Sonderfall Albanien: Enver Hoxhas 'Eigener Weg' und die historischen Ursprünge seiner Ideologie therefore retains a primary importance for an understanding of Albanian communism as stemming from a decisively Albanian line of heritage. While these deserving aspects taken into account, it is more compelling, as pointed out, to interpret Albanian communism with a primary focus on an overall communist and Marxist comparative framework (with advisable focus on intra-Balkan objects for comparison). The early stages of communist rule are compellingly analysed in the monograph of *Hoxha, Artan R.*: Tharja e Kënetës së Maliqit dhe Ndërtimi i Regjimit Komunist në Periferi të Shqipërisë. Tiranë: Onufri, 2021. The study offers an analysis of the administrative and political governance of two big modernising projects in the area of Maliq, in relative proximity to Korça: first, the drainage of the vast swamp in an effort to gain arable land for agriculture, and then the introduction of an Albanian sugar industry in the area as part of the communist policy of industrialization. The first phase was prone to extreme violence as the

communists battled potential competition from non-communist technical elites, while the second phase showed the potentially legitimizing attractiveness of communist projects to some broader layers of the population to whom social mobility was now offered on a scale unseen until then. Similar results are offered by the study of another industrializing project which took place later and on an even larger scale, that is the (difficult) construction of the core of heavy industries by setting up the steel plant in Elbasan. The enormous difficulties to launch this plant, in spite of support given by China, also come to the fore in the respective monograph by *Nonaj, Visar*: Albaniens Schwerindustrie als Zweite Befreiung? 'Der Stahl der Partei' als Mikrokosmos des Kommunismus. Berlin, Boston: De Gruyter Oldenbourg, 2020. The governmental practices to proletarise mentalities in order to gain support for communist modernization, and individual responses, are treated in the anthropological study by *Lelaj, Olsi:* Nën Shenjën e Modernitetit: Antropologji e Proceseve Proletarizuese gjatë Socializmit Shtetëror. Tiranë: West Print, 2015. For an analysis of the history of ethnography as a scholarly discipline of specific symbolic relevance to the regime during the communist period and as formed by the approaches and directives of the ruling party, see the co-authored book by *Bardhoshi, Nebi / Lelaj, Olsi*: Etnografi në Diktaturë: Dija, Shteti dhe Holokausti ynë. Tiranë: Akademia e Shkencave e Shqipërisë, 2018. The term 'our holocaust' as used in the title and in their analysis is used by the authors as Albanian equivalent to the concept of 'cultural genocide' (as committed by the regime upon traditional Albanian culture) and should not distract the attention of an international readership from the scholarly nature and value of the monograph. For a vivid contrast between the regime's attempts to describe and create a new socialist personality (or rather, as per their own propaganda, to build the socialist 'new man') and the countertactics by individuals themselves, see *Nikolla, Albert P.:* Njeriu i ri Shqiptar: Ndërmjet Moralit Komunist dhe Krizës së Tranzicionit**.** Tiranë: Onufri, 2012. The semantic transformation of the public language used in the Party's political and socio-behavioural endeavours has been thoroughly analysed by *Vehbiu, Adrian*: Shqipja Totalitare: Tipare të Ligjërimit Publik në Shqipërinë e Viteve 1945-1990. Tiranë: Çabej, 2007. For a discussion of both international (among them also geopolitical) aspects and the repercussions they had on Albanian society, see *Mëhilli, Elidor*: From Stalin to Mao: Albania and the Socialist World. Ithaca, London: Cornell University Press, 2017. Mëhilli shows how socialism created, to some extent, a shared transnational material and mental culture, but it failed to generate political unity. Last but not least among the monographs to be mentioned here is the study by *Idrizi, Idrit*: Herrschaft und Alltag im albanischen Spätsozialismus. Berlin, Boston: De Gruyter Oldenbourg, 2018. Idrizi provides for a close reading of the relationship between communist governance and every-day life in Albania during the last decade of Enver Hoxha's rule. Among its many merits lies the fact that the archival and oral sources used for analysis are not restricted to urban milieus, but extend to ordinary lives in the countryside, that is of the majority of Albanians under communism.

Chapter 3

State Terrorism, Psychocultural Trauma, and the Whitewashing of Enver Hoxha: A Moral Reckoning with Communist Privilege

Lori Amy

> The term 'traumatized' is thus also applicable to a society which has been the object of state terrorism, because a set of meanings and a type of rationality have become socially sanctioned, legalized and normalized by those in power. These meanings and types of rationality endorse acts which are 'usually' considered to be criminal—for example, torture, murder and the disappearance of people. 'Sick' acts are deemed 'good' and 'healthy' acts by those in power ... . It is paramount for the subsequent process of democratization that these shifts of meaning and rationality are reversed, so that normal human rights ethics can be reestablished.
>
> —Inger Agger and Søren Buus Jensen. *Trauma and Healing Under State Terrorism*

Abstract

In the 30 years since Albania opened its borders and accepted party pluralism and a market economy, the people have never had leaders who could responsibly, ethically, and with integrity confront the structure of state terror with which the communist regime maintained its power. This pervasive social fear produced what Inga Agger and Søren Jensen call psychocultural trauma. Beyond the individual traumas that people experienced, psychocultural trauma damages the

entire social fabric, severely harming relationships between people and groups and distorting individual and collective thinking. This chapter explains this psychocultural trauma and argues that the human rights ethic that democracy requires cannot emerge out of a collective consciousness distorted by such trauma. With this understanding, I argue for moral repair as the foundation for a development policy that prioritizes understanding and healing collective wounds. As an example of what healing would require, I show how restorative commemoration of historical sites can serve as spaces through which the collective is able to integrate traumatic histories and restore social bonds. I then offer a close analysis of two high-value cultural heritage sites that symbolize the complexity of totalitarian violence and could have served as critically reflective spaces for collective healing. Both sites have been either destroyed (the historical national theatre) or repurposed in an attempt to bury the past under promises of the beautiful future to come. I use these two examples to show, also, how the international development paradigm has been complicit in denying Albanians the possibility of moral repair and collective healing.

* * *

Introduction

In the 30 years since Albania opened its borders and accepted party pluralism and a market economy, the people have never had leaders who could responsibly, ethically, and with integrity confront the structure of state terror with which the communist regime maintained its power. The half century of Enver Hoxha's Dictatorship of the Proletariat constituted a sustained state of 'psychological warfare' intended to create 'fear and disorganization' at every level of human relationship. This pervasive social fear produced what Agger and Jensen call psychocultural trauma. As they explain, to survive pervasive lies, distortions and contradictions, individuals split-off and repress aspects of their own experience and memory that they cannot express. This fragments memory at both individual and collective levels. Beyond the individual traumas that people experienced, psychocultural trauma damages the entire

social fabric, severely harming relationships between people and groups and distorting individual and collective thinking. This fragmentation of consciousness makes it impossible to produce a historical record that adequately maps individual or collective experience; without this record, there is no coherent narrative through which people can 'know' themselves, and, by extension, their families, communities, and nation.

In this distorted, culturally traumatized world, acts which are in healthy environments considered criminal—such as torture, murder, and the disappearance of people—are seen as right action by those in power. When the 'news' is propaganda and the state's official narratives contradict people's lived experience, trust is destroyed. These traumatic distortions confuse consciousness itself, and the human rights ethic that democracy requires cannot emerge out of this this distorted consciousness. Albanians today thus face the impossible demand to produce a functioning democracy guided by the rule of law while still operating from the distorted world of psychocultural trauma. Before democracy can emerge, we must understand and repair these wounds.

One important way that societies can begin to heal the wounds of state violence is through what Heidi Bauer-Clapp calls restorative commemoration. Restorative commemoration takes sites that symbolize the violence people have endured and uses these as critically reflective spaces for communities to understand how that violence harmed them. This harm can be material (what people have lost or had taken); social (how relationships have been damaged, trust broken, and community destroyed); as well as political (how those with power abuse, exploit, and oppress the population). These enduring legacies of state violence leave people with pain, suffering, fear, distrust, anger, and with the structures of abusive power that created the trauma in the first place. These things do not simply disappear once a dictator dies. Hence a primary purpose of restorative commemoration is to ask, not just what violence meant in the past, but, as fundamentally, 'what that violence continues to mean in the present'. It is a way of remembering the past that, as Joost Fontein explains, acknowledges 'the debt of the living to the sacrifices of the dead' and so helps a bereaved people to mourn their losses and begin the long road towards 'reconciliation, healing,

and the resolution of suffering'. For this work, restorative commemoration uses historical sites that symbolize what the country has suffered as a means of social repair.

In Albania, two of the sites uniquely suited for restorative commemoration that could have helped to heal the psychocultural trauma from which the country is still suffering are the Historic National Theatre and the Pyramid. The national theatre marks the beginning of a dictatorship characterized by psychological warfare that kept people afraid, confused, divided, disorganized, and therefore unable to mobilize political opposition. Hoxha held the 1945 Show Trial that purged his political opposition and consolidated his power in the National Theatre. From 1945 until Enver Hoxha's death in 1985, this psychological warfare shaped people's ways of seeing, thinking, feeling, and behaving. After Hoxha's death, a team of architects, led by Klement Kolaneci, Enver Hoxha's son-in-law, designed the Pyramid as a museum to celebrate and glorify the dictator who, for 45 years, terrorized the people into submission.

As historical landmarks defining the beginning and the end of the dictatorship, the National Theatre and the Pyramid tell the full story of Hoxha's reign. These sites thus offer possibilities for restorative commemoration that would allow Albanians to express the complex range of their experiences under the dictatorship, and in particular the experiences of the persecuted that, to date, have been repressed, marginalized, and discounted. Each site has played an important role in state violence, and uncovering these roles can help the country to understand the mechanisms of state violence, such as terror, repression, distortion, surveillance, torture, imprisonment, state lies and propaganda. Restorative commemoration of these sites would also help to produce the public record that would facilitate citizens' need for the state to acknowledge and take responsibility for the crimes of communism. 75 years after the communist dictatorship was founded, and 30 years after a transition that has been backsliding into authoritarianism, it is not simply the violences of the past with which the country must reckon. More fundamentally, Albanians are waiting for a moral reckoning with the cultural trauma that distorted meanings, damaged relationships, and that continue to harm social, political, and economic life today.

The public record that restorative commemoration can establish is especially important as a majority of Albanians continue to live in memory bubbles, where the experiences and memories of their families and the small circle of their trusted friends shape what they know and how they think. These memory bubbles are very different for families that have been persecuted than they are for families that were privileged under communism—so different that they constitute radically different realities. Without any way to understand the full range of people's experience and memory and integrate these into a collective narrative, memory itself, at both the individual and collective levels, remains fragmented, split, and distorted.

Unfortunately, on 17 May 2020, the state destroyed the National Theatre and so robbed the country of the moral reckoning that could come through a restorative commemoration that reflects upon the role the 1945 Show Trial played in producing the psychocultural trauma still wounding Albanians, as well as the resilience of a people who, until 2020, found a degree of voice and agency in the theatre's artistic productions. An even worse fate is planned for the Pyramid. The Albanian American Development Foundation (AADF) is working with the Albanian government to turn this monument—created to idealize and idolize the dictator whose reign of terror wounded the psyche and soul of the country—into a slick, hip technology hub. Rather than using the site to understand the mechanisms of psychocultural trauma and heal the wounded psyche of the people, this project continues the denial, distortion, and fragmentation that perpetuate psychocultural trauma today.

To explicate this argument, I am going to coin a new term, 'communist privilege'. This is an obvious extension of the concept of white privilege, though I am going to limit my analysis to a comparison of two specific features of white privilege as they occur in the United States: the ability of Americans with white skin to not have to know what African Americans have and continue to suffer, and the violences structured by slavery that continue to persist today. This is a loose analogy that, as Chelsi West Ohueri warns, runs the risk of minimizing 'the experience of chattel slavery and the trans-Atlantic slave trade and its impact on Black

life'. Moreover, as I am concentrating on the experience of Albanians, this comparison glosses the 'founding violences of racial capitalism [and] white supremacist colonial violences that included genocide and chattel slavery', neither of which are factors in Albania but both of which are also sources of ongoing trauma in the United States (as for example with 'indigenous displacement and genocide'). As Ali Moussa, Coordinator of the UNESCO Slave Route Project, points out, 'the slave trade and slavery' are 'among the major crimes that have marked human history', unprecedented in 'their magnitude, their duration and the violence that accompanied them'. While conscious of and sensitive to what this analogy risks, I nevertheless use it because my focus is on privilege ... on what allows one group of people to not have to know about the violences that others suffer. Analysing the traumatic legacies of communism in Albania through the lens of white privilege helps us to more clearly see aspects of ongoing violence, oppression, and denial that have remained invisible.

Even within these limits, there are of course significant differences between white privilege in the US and how I want us to think about 'communist privilege' in Albania. For the purposes of this analysis, I am narrowly concerned with two features—the privilege of not having to know and the ways that the structures of past violence are perpetuated. The analogy helps us to understand how many people in Albania do not have to know the horrors that the twenty percent of the population persecuted by the communist regime suffered, and how the structural violences of the dictatorship continue today. As Margaret Urban Walker explains the continuing effects of structural violence, past violences that are not addressed determine 'life experiences and life chances for generations'; the effects of the violence do not simply 'go away' but in fact get 'worse as new generations not only inherit the continuing patterns of disadvantage and injustice' that stem from past wrongs, but 'also experience outrage, mistrust, and despair at the continuing denial, indifference or self-justification of those who have profited or continue to profit not only from the original wrong but also from its continuing effects'.

The second reason for comparing white privilege in the US and communist privilege in Albania is that unpaid labour by people that were not free was a significant economic force

in building both countries. Both slave labour in the US and prison labour in Albania perverted social relationships and established criminal 'meanings and types of rationality'. We must deconstruct these meanings in order to begin the work of moral repair that can restore the relationships and establish the human rights ethic necessary to democracy. Moral repair is much more than simply compensation or efforts to address material loss or damage. It is *relationships* that have been 'shaken, broken, distorted, or fouled', and these damaged relationships remain 'an ongoing source of threat, insult, anger, fear, and grief. It is thus the ethical relation amongst people, and between the people and the state, that must be restored. Ethical restoration demands a moral reckoning with state violence. There can be no lasting peace or stability without this moral reckoning.

Unfortunately, the AADF and the Government of Albania are embarked on a course that will perpetuate the denials and distortions of psychocultural trauma in Albania. This is a grave injustice that will add 'layers of disregard, indifference, disrespect, contempt [and] belittlement' to the open wounds still bleeding in the country.

White Privilege–Communist Privilege

In 2020, massive demonstrations rocking the United States following the public murder of George Floyd show us that there is no such thing as a 'break with the past', and that, on their own, elections and business do not and cannot change deep structures of inequality and legacies of state violence. When Derek Chauvin knelt on George Floyd's neck and killed him—ignoring Floyd's pleas that he could not breathe, mocking him when he said he was dying—he was acting from a history of white privilege, the ideology of white supremacy, and the legacy of slavery. He was reenacting a belief system that created a social and economic system that subjugated, dehumanized, and terrorized an entire population of people.

I begin with the example of slavery haunting the United States for two reasons: 1) the United States has been one of the biggest believers in the myth that you can just leave the past behind; and 2) the wounds of slavery in the United States

and the wounds of communism in Albania share certain similarities. I have had conversations with dozens of different 'donors'—highly placed agents of international development—who really believe that jobs and money and justice reform will solve all of Albania's problems. Many of them insist: 'Albanians do not want to look at the past. They are interested in the future'. Derek Chauvin, I am sure, would agree. From the point of view of those who have inherited the privilege of whiteness, slavery was a long time ago and has nothing to do with them. Until we start looking at the structure of racist violence and what it means to have the privilege of white skin. The murder of George Floyd exposes a truth that Americans have been trying to deny: the horrors of slavery cannot just be 'forgotten' with time. Nor can the horrors of communist persecution in Albania.

We now have four generations of Albanians that have been born into a culture shaped by state terror, and this legacy continues to dictate identity and social relationships today. This unarticulated history—in Paul Connerton's terms, the incorporated histories, or, in Pierre Bourdieu's terms, the habitus—is embodied, lived, passed on from generation to generation, but never reflected upon, never articulated and thus never fully understood. This is the most insidious root of the violence that Albanians must face and work through—the violence done to the mind, the psyche and soul of the people. Albanians have inherited a structure of state terror based on a structure of power that says 'I am God—defy me, and I will annihilate you!' In order to survive this power, the people learned to tell power what it wanted to hear and to keep their true thoughts secret. They lived with a chronic, pervasive fear that taught them to distrust everyone and everything—anyone could be an informer, a spy, trying to get information or do you harm. Denial and lies were the daily bread of life—from the obvious lies, such as the state denying its crimes (or, in classic doublespeak, calling torture love, lies truth, and betrayal honour), to the daily habits people developed to survive state violence (not wanting to know what was really happening in the gulags, shunning neighbours with bad biographies, and the double consciousness that showed the people in power what they wanted to see while denying the truth of their own experience).

These are the distorted meanings that have perverted social relationships and continue to shape consciousness, and it is these ways of seeing, thinking, and feeling that Albanians must confront and transform in order to reestablish a human rights ethic necessary for a functional democracy based on the rule of law. We have been misguided to think elections and consumer goods could magically bring a new system. Beyond the executions, beyond the gulag system, beyond the surveillance apparatus, beyond the specific violences enacted, it is this emotional and psychological legacy of state violence that forms the core of the trauma still gripping Albanians today, and it is this core, this traumatic legacy, that Albanians are called to face. It is thus not simply the specific violences of the past with which Albanians must now reckon, but also the insidious ways that these violences have crippled the soul and psyche of the country and continue to dictate every aspect of social, cultural, and political life today. This violence leaves a dual legacy: on the one hand, forms and structures of power that consider all dissenting voices enemies that must be annihilated; on the other, a people subjugated, who, in order to survive, obsequiously align with power in the hopes of protecting themselves, secretly plot their escape while pretending to agree with the power structure, or hopelessly surrender to their fate, keeping bodies alive while their spirits are dying.

In order to fully grasp how pervasive the unresolved trauma from the communist regime in Albania is, we first have to understand that the structures of violence with which Hoxha terrorized the population into submission were almost absolute. Hoxha put the structures of state terror in place immediately after the second world war—with the first Soviet-style show trial, held in the historic National Theatre. As the Allied troops were declaring victory in the second World War and German troops were preparing to leave Albania, the Partisans—with Enver Hoxha as their leader—were already launching a propaganda campaign calling leaders of their political opposition, the *Balli Kombëtar* and *Legality*, traitors. The Partisans thus marched into Tirana in November 1944 as the victors of a civil war who had already prepared the ground for the first show trial that would continue to purge their opposition. The Special Court was set up on 25 December,

1944—less than a month after the communists rode their tanks into Tirana—and the trial began on March 1, 1945.

The 1945 Treason Trial established the communist show trial as a pillar of state terror. Robert Elsie, preeminent historian of Albania, describes it as 'one of the most spectacular events in the early period of communism in Albania'—a spectacle that 'marked the beginning of an unprecedented reign of terror that lasted for years. Countless people found themselves in prison and internment, or before the firing squad'. Subsequently, show trials became a standard feature of life under the dictatorship and were a primary vehicle for expropriating property. The state took everything from the accused—their property, every piece of gold, every valuable trinket and household item. Families were thrown penniless into the streets. The gulag system developed in-tandem with the show trials (the vehicle for political purges and expropriation), in part as the way to contain and use as forced labour the families of those who were tried and expropriated. The accused who were not executed were sent, along with their families—wives, children, and household members—to hard labour in prison camps, to internment camps, or to exile in remote locations. Within a very short time after taking power, the communists, under the direction of Enver Hoxha, killed and exiled most of their political opposition as well as the interwar elite, clan chiefs, land holders, and members of previous Albanian governments. King Zog, who had fled the country on the eve of the Italian occupation, remained in exile.

With this trial, the stage was set to expropriate one hundred percent of Albanians' private property; to create the friend, neighbour, relative, coworker, as 'enemy' to be imprisoned and interned; and to build the entire country with prison and forced labour. With this first pillar of state terror, the 1945 show trial also laid the foundation for state crime. Jennifer Balint, in *Genocide, State Crime, and the Law: In the Name of the State*, defines state crime as state policy that uses the institutions of the state to carry out mass harm against its populations. 'This includes the police, the army, and the legal system'. While every organ of the communist state's apparatus was in the service of carrying out mass harm against Albanians, I want to focus particularly on the way that unpaid labour by people who are not free structured state

terror and built the country. The Penal Code of 1952, based on 'the principles of class warfare and revolutionary justice', sets up the legal framework for prison labour. Specific examples of this include:

- Article 201 prescribed corrective labour or prison for people who leave work early or try to quit;
- Article 90 prescribed internment or prison labour camps for up to five years for 'producing industrial goods of bad quality, not in sufficient quantity, or in violation of the designated standard';
- Article 16 prescribed 'death, imprisonment, and internment at corrective labour camps for 'damage to state property and economic sabotage';
- Article 6 prescribed incarceration for children as young as 12 years old for 'economic sabotage'.

The 1952 penal code never once mentions slavery ... but then, neither does the US Constitution. Both, however, established the legal framework by which people who are not free—slaves in the US, prisoners in Albania—were used as a captive labour force. Both the show trials and the 1952 penal code placed the law in the service of imprisoning vast numbers of the population and using them as unpaid labour. As Albanian legal scholar Jordan Daci explains, by using the law as an instrument of state crime, 'the communist regime' destroyed 'values such as rule of law, human rights, and democracy'—values which were virtually 'deleted in the collective memory of Albanians for more than 45 years'. The economic and legal parallels between US slave labour and Albanian prison labour are, however, only half the story. The profound horror lies in the brutality used against slaves and prisoners. The extreme violence to which more than one-fifth of the Albanian people were subjected has remained largely invisible, and this fact is an enduring pain for those persecuted by the communist regime. The continuing repression and denial of the horrors they suffered is, in Margaret Urban Walker's terms, a second violation that repeats the crimes committed against them: first, to be victimized, and then, bleeding in plain sight, for their wounds to be denied.

What Albanians suffered under communism began with the structure of state crime put in place with the 1945 Show

Trial—held in the National Theatre, which is now destroyed as a site of moral reckoning. The Show trial defined public and political life. It taught the people: there is no justice. The trial is a performance, with a predetermined outcome. Your friends and neighbours will be bribed and threatened to provide false evidence—the state will make up any lie to convict you. If you fall on the bad side of the state, you will be publicly humiliated, branded an 'enemy of the state', and sent to prison or internment. If you are one of the lucky few that eventually return to your community, you will live your life—and your entire family, from husbands and wives and children to your brothers and sisters and mothers and fathers, will live their lives—with a 'bad biography', labelled an 'enemy of the state' and condemned to the fringes of society. Your former friends will shun you—to be seen with you puts them at risk, too.

While the Show Trial set in motion this psychocultural trauma from which the entire country suffered, approximately twenty percent of the population were victims of violent oppression. The violence of the regime was in fact far worse and more pervasive than most people understand, and a first crucial step in reconnecting the broken lines between experience, memory, and public representation is to correct the public record that continues to repress and deny the reality of past violence. Two of the most significant violences that must be brought into the public record and witnessed are the numbers of people that died in the gulag system, and the regime's macabre practice of burying bodies in secret locations, and then, frequently, digging them up and burying them again in even more secret places.

According to official figures, the regime executed 7,595 people, and another 1,148 died in prison. However, scholars today have reason to believe that the official data vastly underrepresents the scope of the death and suffering in the gulag system. Agron Tufa, for example, formerly head of the Institute for the Study of Communist Crimes and its Consequences, was conducting research on extra-judicial executions in Albania by the communist party during WW II and uncovered evidence that provoked the Socialist Party Parliament to propose a ban on his research. Data from international investigations in the 1950s, though, supports Tufa's and others' beliefs that there are in fact significantly

more victims of communism than official data recognizes. For example, a 1955 UN Security Council report on Forced Labour in Albania includes testimony such as:

- 'At the 'Death Camp' in the village of Vloçisht ... some of the inmates who were too sick to work were actually buried alive at the canal';
- Mrs. Gjyshte Ndoci was interned in the Tepelene camp with three children, pregnant with her fourth. She gave birth in the camp, and the child died 3 days after he was born. On a forced march to another camp, another of her sons died. She had to bury him by the roadside. Four days after arriving at the new camp, still another son died;
- Iman Mustafa Hoxha, in his twenty months in internment, reports over 1,200 deaths in the camps in which he was imprisoned—on average, 'seven or eight deaths daily, mostly of children'.

Historical records that suggest a much higher death toll (especially of children) than the official data reports force us to ask: how are the official numbers of deaths calculated? With what records and data, and by what method? To date no comprehensive study has been undertaken that synthesizes and analyses the full range of historical documents necessary for this understanding, including archive material, oral history, media reports, testimony from survivors of camps, and private records (such as journals, diaries, letters, and other first-hand testimony from eyewitnesses). Before we can have any clear understanding of the real number of deaths, the full range of losses suffered, we have to bring all of these documents together, cross-reference and look for gaps, inconsistencies, raise questions.

In the absence of state-led initiatives for historical truth, a privately funded organization, Kujto.al, is in the process of digitizing archive material and creating an extensive online repository for scholars to study, including an interactive platform that invites oral history and historical information left out of the official records. Funded by a private citizen, Agron Shehaj, and staffed by a largely volunteer group of historians, journalists, and student interns, kujto.al testifies to the passion, commitment, and dedication of Albanians who

want to correct the historical record and help their country. As Erald Kapri, journalist and historian working with the kujto.al project, explains it, kujto.al provides a platform for Albanians to tell their family stories as well as to learn about and discuss the history of communism. The platform features 'articles, research, [and] documentaries' that engage a young audience (a population that otherwise has very limited access to information about communism). Kujto.al has more than 2.2 million viewers on YouTube alone—a fact that stands as a sharp rebuke to those who say that Albanians have no interest in the past and only want to move on.

While the country lacks a comprehensive state-led truth and memory initiative, the evidence of crime we do have is damning—and largely unwitnessed in the country. Consider how the practice of publicly announcing executions worked in tandem with secret burial as part of a perverse structure of state terror that restructured the subjectivities of its citizens via force and propaganda. Every time somebody was executed, the national newspaper, radio, and television announced the execution. It was a celebration—another 'enemy of the state' defeated by the Dictatorship of the Proletariat: another poet, another priest, another scientist murdered. And then, her body was buried in a secret location. Then, to be really really sure the bodies could never be found, they were often dug up buried again in even more secret places.

To this day, the un-recovered bodies of executed family members remain an open wound, a ghostly presence that haunts the country. While the International Commission for Missing Persons (ICMP) has been trying for over a decade to locate bodies and return them to their families, Albanian authorities consistently refuse to cooperate; As of 2021, the ICMP had manged to find only 2 of Hoxha's victims. Thousands of families are thus still looking for the bodies of their fathers, grandfathers, uncles, grandmothers—yes, women, too, were executed. Many of these families, in a quest to find the bones of their loved ones, have spent years asking prison guards, the people on the firing squad, bureaucrats who used to work in the Ministry of Interior, the *Sigurimi*, anybody who might have heard something from somebody who might have information: do you know where the body is buried? Scores of families have taken this information, picked

up their shovels, and started digging—which is how the mass grave behind Dajti Mountain was found. This discovery was made by Goni and two of his friends. Searching for the body of his father, Goni spent years collecting information from every person he could get to talk to him, scouring archive material and studying it, digging in many different locations over a period of years. Finally, on a winter day in February 2010, Goni and his friends dug up skeletons in a mass grave on the outskirts of Tirana—all shot in the head, bones showing evidence of torture.

But how to make sense of this bizarre practice of burying bodies in secret? Why go to so much trouble to make sure that bodies could never be found? And how does this contribute to psychocultural trauma under state terror? On the surface, this is partly about denying people the right of burial. The immediate families of the executed were frequently in prison or internment themselves, so to whom would the body of the executed be returned? If to extended family—cousins, uncles or aunts, for example—then the funeral rite potentially brings branches of the family together in a common grief. Collective mourning might lead to an anger that allows people to rise up and revolt, and of course the state would want to prevent this. But the perversion is deeper and more profound than this. The executed may have been informed on by friends, neighbours, or even extended family members. Perhaps they provided false evidence at his show trial. Or, more extreme, extended family, community, colleagues may have been part of the apparatus of arrest, interrogation, torture, trial, and execution. Maybe they worked as *Sigurimi*, police, investigators, judges, prison guards, members of the execution squad. How would any of these people attend a funeral? Or explain their absence? To attend a funeral of somebody in whose death you played a part might prick your conscience, make you feel remorse.

It is precisely conscience and remorse that the regime had to kill. Under no circumstances could there be a public funeral that might call to conscience a prison guard, a member of the firing squad, a judge, a neighbour who gave evidence, a family member who tried to protect himself by distancing from his 'enemy of the state' cousin. Ordinary people who heard the executions announced on TV have the ordinary survival instinct: they don't want to be the next one executed. A funeral might make the 'enemy of the state' a person again,

might break through the defence mechanisms and survival instincts that the regime manipulated to keep people divided, afraid, turned against each other instead of joining together to fight oppressive power. And this is the core perversion of state terror: it disperses guilt across the entire population, making everybody afraid, ashamed, complicit. To survive this, people have to split off parts of themselves, repress, deny, and distort a reality they cannot bear to fully confront.

For fifty years, a terrorized population survived the daily fear of arrest and imprisonment by denying, hiding, repressing, and splitting off parts of themselves, leaving individuals and the entire society with a pervasive fear and distrust, feeling isolated and disconnected. This condition continues today and will persist until the country achieves a moral reckoning with the architecture of state terror and its primary architect, Enver Hoxha. To date, the people lack a historical record that can integrate what has been split-off and repressed from the communist past. There are no school textbooks that deal with communism, no national days of commemoration, no official state apology that acknowledges the crimes of communism and what people have suffered. Each family is thus its own little island of memory and identity, where parents transmit to their children only the realities they have lived. For those who were persecuted, the persecution is often replayed, over and over again, inside of the family. For the rest—those with the privilege of not having to know what the persecuted suffered—consciousness is shaped by practices of denial, omission, and silence. This has created a condition of memory silo-ing so extreme that persecuted families live in a vastly different reality than the families that have had the privilege of not having to not know the extent of the violence to which their fellow countrymen were subjected.

A chilling example of this memory silo-ing occurred when the National Democratic institute showed a segment of Rose Dosti's documentary on Albanian prisons to their youth groups. Many of the young people present had never heard about the communist prisons and refused to believe that they existed. How is this possible? When twenty percent of the population was violently persecuted? A story from Dr. Eugene Reed, who collected evidence of Nazi war crimes for the Nuremberg trials, helps us to understand how deep the

desire to not know runs. Interviewing villagers who lived near concentration camps, Reed discovered:

> Villagers knew about the camp near them. They saw the thousands of people who, every day, were herded into the camp like cattle. They saw that nobody ever left. They saw the camp released a constant stream of smoke and ash. Every day, they got out their feather dusters and, without thinking about what it meant, dusted off the layer of ash that, every night, covered their windowsills. When the Nazis were defeated and the truth exposed—the gas chambers, murdering and burning millions of people—they were all shocked and horrified and said they had no idea of what had gone on inside.
>
> But they all had ash in their feather dusters.

There are a lot of reasons for people to not want to know what happened. Maybe they come from families that were part of the communist power structure, families with secrets to keep. Maybe their families were not part of the power structure at all, but kept their mouths shut and their heads down, kept a decent job and enough to eat and did what they had to do to raise their families—they don't want to have to feel guilty for surviving. Maybe they come from families who were threatened, bribed, harassed, or forced to act as informers (the low estimate is that one in five Albanians collaborated in this way, the high estimate one in three). Maybe their families just trained themselves to not see, to not know—because seeing and knowing would be too hard; if they let themselves see, let themselves know, they wouldn't be able to go on with their lives anymore.

These are a lot of the same reasons that white people in the United States do not want to know about the horrors of slavery, or the way the structures of racist violence continue to wound African-Americans today. And they certainly do not want to know how the privilege of white skin has allowed them to live without having to know about these violences. Like white Americans who do not want to have to face the reality of racist violence and its legacies, those who continue to repress, deny, hide, and minimize the brutality of communist violence in Albania all have ash in their feather dusters. Or, more accurately, they are all walking, oblivious, over the bones of the dead Hoxha buried in secret.

Monumental Mistakes

For those who want to believe that this psychocultural trauma will pass on its own with time, we need only look at how the legacy of slavery continues to impact the United States. Over a century and a half after the emancipation proclamation officially ended slavery, the country is erupting in protests over how the distorted consciousness that is the legacy of slavery continues to structure harm for African-Americans today. In a similar vein, the distorted consciousness of state crime under communist dictatorship in Albania is repeating today in the practices of illegal development. The stage for this was set with the 1945 show trial, held in the National Theatre; the families of those tried were sent to the gulags as enemies of the state, their homes and possessions confiscated. Subsequently, show trials became primary vehicles of expropriation. By the time the regime transitioned, the state had expropriated every centimetre of Albanian land. When economic shock therapy privatized the country overnight, there was no provision for the complicated human rights dimension of property restitution. While persecuted people were making legal claims to have their property returned, government officials, former *Sigurimi*, and the burgeoning construction mafia were grabbing land for illegal development—frequently, aided and abetted by the development policies that promised the people freedom and democracy.

The highly corrupt practices of illegal development today thus repeat the crimes of communist dictatorship still crippling the country. From the beginning, state officials have been key players in property crime, as noted in testimony at the 18 July 1996 Hearing before the Commission on Security and Cooperation in Europe on Property Restitution, where 'reports of corrupt officials allegedly willing to forge land records or decide claims in favour of those offering bribes' left committee members 'suspicious of all documentation from Albania'. It is no wonder, then, that judges today are amongst the most corrupt people in Albania—they are frequently working behind the scenes with lawyers, developers, and corrupt politicians to criminally change property titles and land surveys, falsify documents, issue illegal building permits, award building contracts for bribes and kickbacks, and launder money. Meanwhile, the expropriated who have

been waiting—some for twenty years or more—for property restitution or compensation are either left in an interminable legal limbo, or, as is all too frequently the case, expropriated again, this time by corruption that turns their land over for development. As a case in point, in the decade between 2004 and 2014, only 26 thousand decisions were taken on over 60 thousand applications to have land returned. Of those 26 thousand decisions, only 9 hundred had been acted on, and many of those were only partially executed.

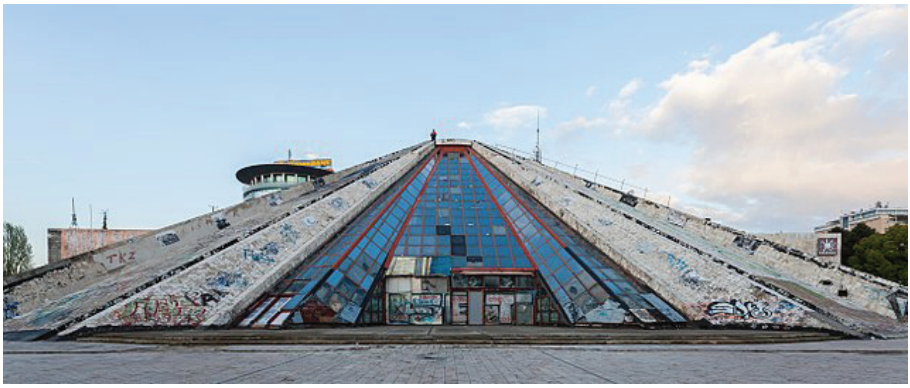
The National Theatre is both the symbolic beginning of the structure of state crime with which the country must reckon and a specific instance of how 'development' continues to perpetuate state secrecy, authoritarian power, and property crime. In 2018, the Government of Albania (GoA) went public with a controversial Public-Private Partnership that would give the last remnant of the historic city centre to a private developer: the GoA and Fusha Shpk privately agreed to a deal (all financial documents and contracts were and have to this day remained secret) that would give Fusha the most lucrative real estate in the country at a fraction of the market value. The proposed deal allowed him to build six high rises for his own personal profit, destroy the historic National Theatre, and build a new theatre (for which the government proposed to repay him over a period of time). The secret nature of a PPP agreed to amongst the power elite was suspect as PPPs in Albania are a primary vehicle for illegal construction and money laundering. Not only was the government proposing yet another secret PPP, it used its majority in Parliament to pass a law specifically awarding public land to a private developer. Popularly known as the 'Fusha Special Law', or the 'Fusha Law', it was protested by citizens, the President, and the opposition as violating the constitution and the Stability and Association Agreement. Nevertheless, in September 2019, the government used its simple majority to force the law, with minor revisions, through parliament.

For the first time in almost a century a grassroots, cross-sector democratic movement rose up to resist authoritarian abuse of power and save the National Theatre. For over two years, the movement held nightly protests and public speak-outs to raise consciousness and fight to save the theatre. Lawyers volunteering with the movement wrote briefs of laws

violated; architects produced technical documents about the historical value of the theatre and the need for preservation; urban planners argued for the importance of the historical centre; investigative journalists reported on the potential for corruption in the proposed public-private partnership; political parties lobbied their representatives in the European Parliament; everybody with an international contact wrote to muster allies. The movement gained widespread international support, including from Europa Nostra, the preeminent cultural heritage organization in Europe. Europa Nostra named the National Theatre one of 2020s Seven Most Endangered Cultural Heritage Sites in Europe, asked for its protection, and pledged a million euro for its renovation.

And yet—after all of this, on 17 May 2020 the Government of Albania launched an early morning raid that destroyed the national theatre with the same kind of violence with which the communist regime was born.

Figure 1. The Pyramid of Tirana.



By Wiki Commons User Basajaun, licensed under GNU Free Documentation License, version 1.2 or later. Access at https://commons.wikimedia.org/wiki/File:Pyramid_of_Tirana.jpg.

While illegal development repeats the state crime of expropriation, the plan to turn the Pyramid, built to glorify Enver Hoxha, into a sleek, hip, high-tech cultural centre is an example of state denial that perpetuates the psychocultural traumas with which the country must still reckon. This denial is what Margaret Urban Walker calls 'normative abandonment':

the failure of other people and institutions to acknowledge the injury done to the persecuted, the failure to 'reaffirm standards, place blame appropriately on wrongdoers and offer some forms of solace, safety and relief' to the victims. Instead of using the Pyramid as a site of moral repair, the Governments of Albania and the United States of America are moving forward with plans that will whitewash the crimes of the dictatorship and its criminal architect, Enver Hoxha. In a particularly painful overlapping of events, this plan moved forward, literally over the dead body of one of one of Albania's most iconic former political prisoners, Max Velo.

Ten days after the government destroyed the theatre as a site of moral reckoning, the Albanian American Development Foundation posted a Facebook advertisement for a Cultural Centre Manager for TUMO, also a Europa Nostra award recipient, to be housed in the Pyramid glorifying Albania's Dictator, Enver Hoxha.

Figure 2. The Demolition of the National Theatre.

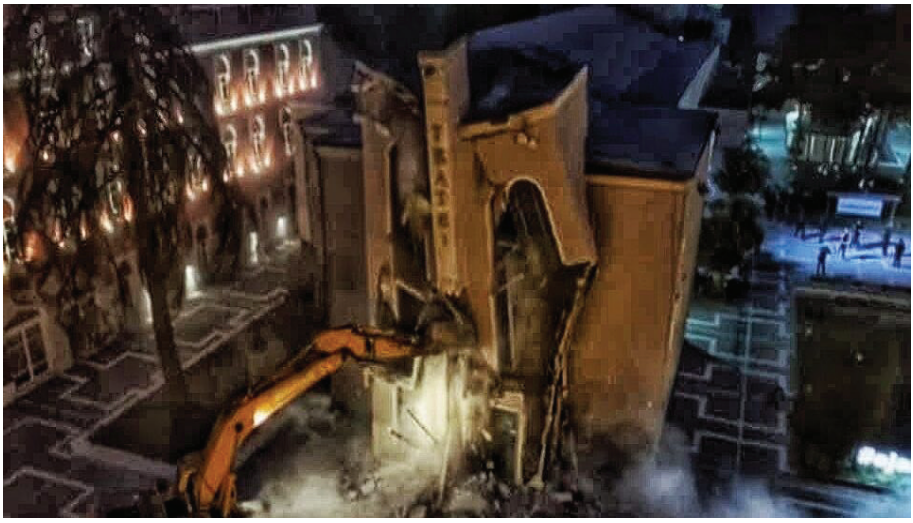


Image by permission of *Exit News* Albania. Access at https://exit.al/video-shkaterrimi-i-nderteses-se-teatrit-kombetar/.

TUMO itself is an amazing initiative. First launched in Armenia by the Armenian-Americans Sam and Sylva Simonian through their nonprofit Simonian Educational

Foundation, the TUMO concept, design, and implementation is at the cutting edge of educational transformation for the 21st century. TUMO provides free extra-curricular education for 12–18 year olds in design, technology, and creative arts. Grounded in flexibility, transparency, and technological creativity, TUMO has received multiple—and well-deserved—rewards for its transformative work: the World Congress on Information Technology awarded TUMO the 2019 Implementation of the Digital Century Award, and Europa Nostra—the same organization that placed the Historic National Theatre on the 2020 Seven Most Endangered Cultural Heritage Sites list—awarded them the 2019 Award in Education, Training, and Awareness-Raising. But TUMO in the Pyramid built to glorify Enver Hoxha?? In a country that has never dealt with the crimes of the dictatorship??

The perversion of turning the monument built to glorify Enver Hoxha into a high-tech cultural centre becomes even worse when we consider the government's narrative. Mayor of Tirana Erion Veliaj describes the Pyramid project as a 'story of resurrection' that can 'make Albania great again'. Prime Minister Edi Rama similarly sees the project as a resurrection that will give an 'iconic building from the country's specific historical era a 'new life' as 'a landmark and a reference point not only in the Balkans, but also in a wider region'. It has been, he says, a 'kind of an open grave right at the heart of Tirana, a building with a heavy history and heritage burden, yet with incredible potential to be reborn'. Given the thousands of families still looking for the bodies of their loved ones—executed, buried in secret, dug up and buried again in even more secret locations—the reference to the open grave is apt. For the twenty percent of the population that has been living with their nightmares, with a pain and a rage that make them hate, 'resurrecting' the Pyramid to 'make Albania great again' is a brutal enforcement of state denial, repression, and distortion. It is, as Stanley Cohen argues, an official rewriting of history:

> In totalitarian societies, especially of the classic Stalinist variety, official denial goes beyond particular incidents (the massacre that didn't happen) to an entire rewriting of history and a clocking-out of the present. The state makes it impossible or dangerous to

> acknowledge the existence of past and present realities ... . Denial is thus not a personal matter, but is built into the ideological façade of the state. The social conditions that give rise to atrocities merge into the official techniques for denying these realities—not just to observers, but even to the perpetrators themselves.

Turning the monument built to glorify Enver Hoxha into a Technology Centre that will benefit those with the privilege of not having to know about the crimes of communism is a cruel example of the 'official techniques for denying' the reality that the twenty percent are still living. And the Albanian American Development Foundation is providing ten million dollars for the feather dusters to clean the ash off of the windowsills.

We also see the government rewriting history in its narrative about the 2010–2011 protests to save the Pyramid. When he presented the TUMO centre project for the Pyramid, PM Rama told his audience: 'You know quite well that there has been a moment in time when a previous government decided to demolish' the Pyramid, but the demolition was blocked by a 'public debate' led by 'a critical group of surprisingly young activists, who had little to do with the past, but who signed a petition oppos[ing] the pyramid's demolition'. In fact, the petition was started and the protests galvanized by Ardian Klosi—the son of Bilbil Klosi, Enver Hoxha's Secretary of the Presidium 1966–1973, Minister of Justice from 1953–1956, and the one who introduced the penal code that sent children as young as twelve years old to prison for economic sabotage. The PM knows quite well that it was Klosi that galvanized the protests to save the Pyramid; he and Klosi grew up together, they co-authored a book, they remained close right up until the day Klosi killed himself on 26 April 2012.

On the one hand: a short-lived action to 'save' the Pyramid, led by a son of the nomenklatura. The plan to demolish the Pyramid was dropped. On the other: a twenty-seven-month grassroots, cross-sector movement, with the support of Europa Nostra, to save the National Theatre—which the Government of Albania exploited a pandemic to destroy.

Klosi was joined in his efforts to save the Pyramid as a historical site of remembrance by Max Velo, a prominent

Albanian architect who was persecuted and imprisoned for ten years in one of Albania's most notorious hard labour camps, Spaç. Velo was also a central figure fighting to save the National Theatre. For over two years, he was a regular speaker at the nightly protests. Velo protested as much against corruption as he did to preserve heritage; for him, the development plan for the theatre represented the 'power of thieves' to destroy the architectural memory of the country and the people. As an iconic figure in Albania, Velo stood as an active agent of moral repair, calling for a restorative commemoration that would make the National Theatre a site of moral reckoning. In fact, the Movement to Protect the National Theatre began a process of restorative commemoration. As Walker argues, when those responsible for criminal harm are 'unrepentant or contemptuous, repair devolves to communities or networks of support within communities'. The movement to save the national theatre evolved precisely this community of moral repair, and Velo was an integral part of the community's work to 'regain self-respect ... to re-establish moral equilibrium, to trust again, to live without terror, to feel safe from those who have harmed them'.

For over two years, a community of witness assembled every night at the National Theatre, where a people left without justice acted as agents of moral repair to reestablish a 'morally authoritative community'; in this community, every member of the audience was free to give 'their own accounts of the damage and insults done' to them. They had the opportunity 'to express their anger, despair, fear, and grief in response to' past violences, and, in so doing, work to restore 'the stability of a moral world and [their] sense of trust and responsibility within it'. Night after night, for over two years, hundreds of people came seeking this moral repair, and Maks Velo was at the centre of this community and this work. Until he died on 7 May 2020, 10 days before the state destroyed the theatre that he fought to save, 20 days before the Albanian American Development Foundation advertised for a person to manage the technology centre that will resurrect Enver Hoxha.

Figure 3. Maks Velo at the Theatre Square.

Photo credit Unë Jam Teatri, 2018, by permission.

Oriol Guni, Albanian cultural critic, theorist, and journalist, brings home how the violence of the past continues today. He argues that 'Albanians are still suffering the effects of a class war similar to the ways Americans are still suffering the effects of racism. In both cases, there is formal recognition that slavery and communism have ended, but the mentalities structured by slavery and communism persist. In Albania, Enverist nostalgia is one of the most pervasive manifestations of this enduring mentality'. Similarly, people who were persecutors under the communist regime continue to be respected today, much as slave-traders and slave-owners in the US remain national heroes. Thus, while both slavery and communism have formally ended, 'the cultural perpetuation of the crimes persists, hindering a full reckoning with past violences'.

One particularly painful way we see this persistence is through the execution of Havzi Nela. Nela was a poet,

persecuted his entire life by the regime. He was sentenced to hard labour for attempting to escape Albania; when he was finally released from prison in 1986, he was confined to a village in the Northern Albanian Alps. Less than a year later, and a scant few years before the regime changed, Nela was publicly executed for the crime of leaving the village where he was confined, by all accounts so that he could visit his dying mother. On 10 August 1988, Nela was hanged from a scaffold in the middle of Kukes. His body was left on display the entire day; at night, he was buried in a secret location. Five years later, his body was recovered—his body had been placed, 'vertically, in a hole in a dry riverbed. When Nela's body was recovered, it was headless'. Kristaq Rama, father of Prime Minister Edi Rama, was among those who signed for his execution—a public hanging, with his body left the entire day in the city square, rotting in the heat of August. 32 years later, Nela's widow is petitioning the Special Court Against Corruption and Organized Crime to open Nela's file and investigate his execution as a crime.

Conclusion

On 25 May—eight days after the Government of Albania destroyed the historic National Theatre and two days before the Albanian American Development Foundation posted a Facebook advertisement for a Centre Manager for TUMO—Derek Chauvin showed the world what happens when a nation refuses to reckon with its history of violence. The United States erupted in protests and riots. While confederate monuments are being torn down across the US, the Government of Albania and the Albania American Development Foundation are working to 'resurrect' the Pyramid, built to glorify Enver Hoxha, and turn it into a high-tech cultural centre that Mayor Veliaj believes will 'make Albania great again'. And for the twenty percent of the country that was persecuted? For whom the wounds of communism are still open, bleeding? How can the children of these families enter a cultural centre that was built to idealize, to idolize, the dictator responsible for their suffering? When the country still fails to take responsibility for the structure of state crime that persecuted their families? When those structures continue today?

Beyond the state denial that whitewashes crimes and so perpetuates suffering, this project perverts the fundamental desire of TUMO. TUMO was created by an Armenian-American to help children in his home country—children who have been the victims of a century-long denial of the Armenian genocide. How can descendants of the Armenian genocide possibly sanction affiliation with a centre that builds denial into the ideological facade of the state? That will further privilege those Albanians who do not have to know about the crimes Enver Hoxha orchestrated, and further disempower, marginalize, and oppress the victims of Hoxha's dictatorship—victims over whom Hoxha triumphantly rises while they are left, unseen, unheard, unwitnessed? For victims, it can be 'unendurable to be ignored, to be denied credibility, or to run up against the fact that others, 'including those institutionally empowered to deal with crime and violence, do not seem to care about one's experience of violation and its consequences'. This abandonment constitutes a 'second injury' that incites further rage, resentment, indignation, and humiliation, and further poisons the relationship between individuals and social groups. While those with the privilege of not having to feel what the persecuted have felt may want to 'close books' and move on, for those who have suffered wrongs that the society has not 'acknowledged and redressed', these 'books are still open, and blood stains the page.'

The horrors of Enver Hoxha's communist dictatorship cannot just be 'forgotten' with time. They will return and demand a moral reckoning. 30 years, 75 years, 157 years later—eventually, the crimes we have failed to atone for will come back to us—we will have to atone for the violences that our forefathers inflicted. While the past cannot be undone, it can be understood, integrated, encountered. Its legacies may be transformed: despair into hope, grief into compassion, suffering into wisdom, pain into love. These transformations are possible, but only by bringing into the light and facing those things from the past that continue to haunt us. Thirty years after Albania opened its borders and accepted party pluralism and free markets, it is not so much an individual within the apparatus of the state that must be held accountable for crime—it is, rather, the architects of state terror and the structures of a criminal state with which Albanians must now

reckon. The country must reckon with this history of violence so that people like M.B. can get the answers they need:

> My mom is 93 years old, is in Tirana, sharp memory, was persecuted the entire life, her dad was executed and she doesn't know yet where [his bones are]. After his execution my grandma was left alone, with no shelters, with none, 5 kids, the youngest 2. I still do not have answers as to why and how humans can be that way.

To restore the human relationships that have been so grievously harmed, the twenty percent of the country that was persecuted must be heard; they need to be able to 'incorporate their experience of violation, betrayal, and terror into an intelligible part of the story of their lives'—which means that their stories have to be included in the national narrative. They need to 'know that others grasp the fact of the violation, its clear wrongfulness, the culpability of the perpetrator, and the reality of the harm and suffering caused them', and they need all of this in order to begin to rebuild the trust and restore relationships that will allow democracy.

And yet—and yet, today, the Governments of Albania and the United States of America are preparing to destroy a possibility for moral reckoning that the country so desperately needs. What Albania needed from the National Theatre and the Pyramid is the restorative commemoration that, as Heidi Bauer-Clapp explains, asks, not just what violence meant in the past, but, as fundamentally, 'what that violence continues to mean in the present' ... such as denying excavation orders to the International Commission for Missing Persons and the continuation of the communist expropriation-gulags dyad via property crimes, illegal development, and the mass exodus of the population. The past cannot be undone, but it can be understood, encountered, integrated. Its legacies may be transformed: despair into hope, grief into compassion, suffering into wisdom, pain into love. Until Albanians achieve this reckoning, the structures of state terror, like the bodies of those Hoxha executed, will continue to haunt the country and the people.

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[1] *Agger, Inga / Jensen, Søren*: Trauma and Healing Under State Terrorism. London, New Jersey: Zed Books, 1996, p. 67. Mechanisms of state terror include direct repression (including violent arrests, forced exile, threat,

arbitrary imprisonment, torture, the 'disappearance' of prisoners, execution, killing opponents under false precepts, death under torture, with the intent to psychologically break or physically eliminate a person); indirect repression (to deprive people of food, housing and health care; dismissal from work; distortion of facts and manipulation of information); social marginalization (to deprive people of their social and political power); and individual marginalization (to deprive people of skills and knowledge, cultural integrity, and self-esteem).

[2] *Khubova, Daria / Ivankiev, Andrei / Sharova, Tonia:* After Glasnost, p. 89–101. In a totalitarian regime, memory itself is a threat. Hence, regimes must rewrite and mythologize the past, pervert memory—the friend is now an enemy, the stable meanings of the past are turned upside down, and anything that challenges the state must be forgotten, entire realms of life consigned to oblivion.

[3] *Agger / Jensen*: Trauma and Healing, p. 68, 70, 181, 201–202.

[4] *Bauer-Clapp, Heidi:* Heritage of Violence: Editor's Introduction. In: Landscapes of Violence, 2016 / Volume 4, 2016, number 1. https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1080&context=lov (last accessed 28 February, 2024).

[5] *Fontein, Joost:* The Politics of the Dead: Living Heritage, Bones and Commemoration in Zimbabwe. In: Association of Social Anthropologists of the UK, 10 December 2009. https://www.theasa.org/publications/asaonline/articles/asaonline_0102.shtml (last accessed: 2 March, 2024).

[6] On moral repair, see especially *Walker, Margaret Urban*: Moral Repair: Reconstructing Moral Relations after Wrongdoing. Cambridge: Cambridge University Press, 2006. For an analysis of the challenges of friendship as a basic component of the democratic social fabric in Albania, see *Amy, Lori / Gjermeni, Eglantana*: Feminist Friendships and the Social Fabric of Democracy: The Dissidence of Daily Life. In: Chowdhury, Elora / Philipose, Liz (eds.): Dissident Friendships: Imperialism, Feminism, and the Possibility of Transnational Solidarities. Chicago: University of Illinois Press, 2016, p. 221–240.

[7] For a detailed analysis of the destruction of the National Theatre, see the Alliance for the Restoration of Cultural Heritage's summation of the illegal activity leading up to and following the demolition: https://www.arch-library.org/2020/08/11/teatri-kombetar-national-theater/ (last accessed: 28 February, 2024).

[8] The more limited scope of white privilege I am using here reflects Peggy Mcintosh's analysis in the widely circulated article *Mcintosh, Peggy*: White Privilege: Unpacking the Invisible Knapsack. In: The Seed Project, 2010. https://www.racialequitytools.org/resourcefiles/mcintosh.pdf (last accessed: 28 February, 2024).

[9] *West Ohueri, Chelsi:* Email communication with author, 20 August 2020. For two issues beyond the scope of this paper, the legacy of slavery in the United States and the violence founding nation states, see for the former *Loury, Glenn C.:* An American Tragedy: The Legacy of Slavery Lingers in our Cities' Ghettos. The Brookings Institute, 1998. https://www.brookings.edu/articles/an-american-tragedy-the-legacy-of-slavery-lingers-in-our-cities-ghettos/ (last accessed: 2 March,

2024); and for the latter, *Giddens, Anthony*: The Nation–State and Violence. In: Contemporary Critique of Historical Materialism, Volume 2. Berkely, Los Angeles: University of California Press, 1987. For additional references, see *H–Slavery:* Digital Resources for the Study of Global Slavery and the Slave Trade. Michigan State University Department of History Humanities and Social Sciences Online. https://networks.h-net.org/node/11465/pages/143424/digital-resources-study-global-slavery-and-slave-trade (last accessed: 28 February, 2024).

[10] *Mousa, Ali:* The Slave Trade and Slavery: A Founding Tragedy of our Modern World. UNESCO News. 22 August 2019. https://www.unesco.org/en/articles/slave-trade-and-slavery-founding-tragedy-our-modern-world (last accessed: 2 March, 2024).

[11] I was surprised at the number of Albanian-Americans who read drafts of this chapter and agreed with the major points but objected to the notion of 'white privilege' in the U.S. I take white privilege as a given—for a more a more comprehensive analysis of what white privilege is and how it functions—and particularly why it remains invisible to white people—see *Lowery, Brian*: Speaking of Psychology: The Invisibility of White Privilege. American Psychological Association, July 2020. https://www.apa.org/news/podcasts/speaking-of-psychology/white-privilege (last accessed: 2 March, 2024); and *Kendall, Francis E.*: Understanding White Privilege. Christian Peacemaker Teams, 2002. https://www.jesusradicals.com/uploads/2/6/3/8/26388433/understanding_white_privilege_-_kendall.pdf (last accessed: 28 February, 2024). For a lucid discussion of structural violence, see *Farmer, Paul*: On Suffering and Structural Violence: Social and Economic Rights in the Global Era. In: Pathologies of Power: Health, Human Rights, and the New War on the Poor. Berkeley, Los Angeles, London: University of California Press, 2003, p. 29-50.

[12] *Walker:* Moral Repair, p. 204–205.

[13] Ibid., p. 209.

[14] Ibid., p. 205.

[15] For a concise overview of the legacies of slavery in the US and their relation to the deaths of Floyd and others, see *Brown, Deneen L.*: 'It Was a Modern-Day Lynching': Violent Deaths Reflect a Brutal American Legacy. In: National Geographic, 3 June 2020. https://www.nationalgeographic.com/history/2020/06/history-of-lynching-violent-deaths-reflect-brutal-american-legacy/ (last accessed: 28 February, 2024).

[16] I have explained the traumatic legacy of the communist regime in Albania, and the importance of cultural heritage sites to the work of mourning necessary to overcome these legacies, elsewhere. See, in particular, *Amy, Lori:* The Problem of Hoxha: Communist Heritage and the Demands of the Dead. In: Conference Proceedings from 'Outcast from the Power: The Eviction / Deportation System and the Use of Forced Labor in Albania, 1945–1990'. Tiranë: Authority for Information on Former State Security Documents, 2018, p. 435–447.

[17] For a detailed discussion of Incorporated memory, see *Connerton, Paul*: How Societies Remember. London: Cambridge University Press, 1989. For a

detailed discussion of the habitus, see *Bourdieu, Pierre*: The Language of Symbolic Power. Cambridge: Harvard University Press, 1999.

[18] WW II in Albania was tantamount to a civil war, with local groups using allied funds as much to fight each other as to sabotage the Axis occupiers. The Partisans were the most effective at wiping out their political opposition. By the time the war ended, they had crippled their major opposition, the *Balli Kombëtar* and *Legality*. For a detailed development of these issues, see *Elsie, Robert:* The 1945 Albanian Treason Trial. n. p.: CreateSpace Independent Publishing Platform, 2015; *Fevziu, Blendi*: Enver Hoxha: The Iron Fist of Albania. London, New York: I. B. Tauris & Co., 2016; *Lucas, Peter*: The OSS in World War II Albania: Covert Operations and Collaboration with Communist Partisans. Jefferson: McFarland & Co., 2015.

[19] Elsie, The 1945 Albanian Treason Trial, p. 15. Seventeen of the sixty people tried were sentenced to death; they were executed immediately after the verdict, on 14 April, and buried in a ditch on the outskirts of Tirana.

[20] *Elsie:* The 1945 Albanian Treason Trial, p. 27.

[21] *Balint, Jennifer*: Genocide, State Crime, and the Law: In the Name of the State. London: Routledge-Cavendish, 2012, p. 26.

[22] Data taken from the *United Nations:* Official Records of the Sixteenth Session of the Economic and Social Council. Report on the Ad Hoc Committee on Forced Labour. Studies and Reports (New Series) of the International Labour Office, Supplement numbers 13 and 36. Geneva, 1953.

[23] The unfair advantage that prison labour provided to communist economies was in fact such a grave concern for the member states of the United Nations that, in 1952, the UN Security Council commissioned an investigation to study 'the problem raised by the existence in the world of systems of forced or 'corrective' labour, which are employed as a means of political coercion or punishment … on such a scale as to constitute an important element in the economy of a given country', ibid.

[24] *Daci, Jordan*: Law and Post-Communist Countries: Case of Albania. In: The Twenty-fifth IVR World Congress: Law, Science, and Technology, Paper series B, number 014/2012. Frankfurt: Goethe University, 2012. https://publikationen.ub.uni-frankfurt.de/opus4/solrsearch/index/search/searchtype/series/id/16178 (last accessed: 2 March, 2024).

[25] Albanians who lived through the gulags have written heart-rending memoirs of arrest, interrogation, torture. We have testimony from people who were sent to prison labour camps, who lived their lives in communist prisons and internment. But this information is in limited circulation: most of it is self-published, at the author's personal expense. Only a handful of copies were printed, and few are owned by any central library. The vast majority is available only in Albanian, so internationals who want to better understand the history of Albania have no way to access this information. Unfortunately, the bulk of this work is read by a handful of people who were also persecuted and does not reach the average Albanian.

[26] *Walker:* Moral Repair, p. 205–207.

[27] For more on the bad biography, see *Stan, Lavinia*: The Vanishing Truth? Politics and Memory in Post-Communist Europe. In: East European Quarterly, 2006 / Volume 40, number 4, p. 383+. https://link.gale.com/apps/doc/A157268150/AONE?u=googlescholar&sid=bookmark-AONE&xid=3959eaa1 (last accessed: 24 February, 2024).

[28] Data for political prisoners executed taken from Arkiva Online e Viktimave të Komunizmit (https://kujto.al/menyra-persekutimit/te-ekzekutuar/ [last accessed: 24 February, 2024]); for political prisoners that died in prison, see Arkiva Online e Viktimave të Komunizmit (https://kujto.al/menyra-persekutimit/te-vdekur-ne-burg/ [last accessed: 28 February, 2024).

[29] For more on the threats against Tufa that drove him to seek asylum, see *Qalliu, Bledar*: Agron Tufa, Communist Crimes Scholar, Seeks Asylum After Death Threats. Exit News, 13 December 2019. https://exit.al/en/agron-tufa-communist-crimes-scholar-seeks-asylum-after-death-threats/ (last accessed: 28 February, 2024); for the proposed ban on the study of communist crimes in WW II, see *Erebera, Gjergj*: MPs from Ruling Socialist Party Want to Prevent Institute Tasked with Probing Communist-Era Crimes in Albania from Studying Incidents that Happened During WW II. Balkan Insight, 16 July 2019. https://balkaninsight.com/2019/07/16/albania-to-ban-the-study-of-wwii-as-part-of-communist-period/ (last accessed: 28 February, 2024).

[30] *United Nations International Labour Office*: Report on Forced Labour. Geneva: Ad Hoc Committee on Forced Labour, 1953, p. 11–13.

[31] Albania does have several excellent online sources that have been chronicling the communist period. For an overview, see Museu i Memories (https://muzeuimemories.info/about-us/ [last accessed: 28 February, 2024]); for a project working to make archive material available online, see Arkiva Online e Viktimave të Komunizmit (https://kujto.al/ [last accessed: 28 February, 2024). These sites will be important foundations for the scholarly work that must still evolve.

[32] *Kapri, Erald*: What's App communication with author, 21 August 2020.

[33] For a more complete analysis of how propaganda restructures subjectivities, see *Bertaux, Daniel / Rotkirch, Anna / Thompson, Paul R. (eds.)*: On Living Through Soviet Russia (Studies in Memory and Narrative). New Brunswick: Routledge University Press, 2004.

[34] For a chilling account of Hoxha's orders to continually dig up and rebury corpses to ensure that they could never be found, see *Fevziu, Blendi*: Enver Hoxha: The Iron Fist of Albania. London: I. B. Tauris, 2016.

[35] In 2017, the Government did approve a project with the International Commission on Missing Persons to search for and identify the remains of those executed and buried in secret. But, after years of work, they had identified only 2 remains as of October 2019; their work has been consistently thwarted by prosecutors who will not issue excavation orders and various government officials who deny knowledge of information about where bodies may be located. *Sinamati, Admir / Tahiri, Anila / Ymaj, Besim / Ismaili, Zija / Vyshka, Gentian / Çipi, Bardhyl*: Osteological Proofs of Torture and Cruelty: Forensic Findings from a Secret Cemetery in Tirana, Albania. In: International Rehabilitation Council for

Torture Victims, 2011 / Volume 21, 2011, number 3, p. 197–207. https://pubmed.ncbi.nlm.nih.gov/22057111/ (last accessed: 28 February, 2024).

[36] For forensic findings of skeletons in the Dajti mass grave, see ibid., p. 197–207.

[37] *Agger / Jensen*: Trauma and Healing, p. 68–70.

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Chapter 4

Transition and Political System Issues in Albania

Afrim Krasniqi

Abstract

Three decades after Albania began its transition from a one-party communist state to a pluralistic aspiring-democracy with regular elections, it is in the paradoxical position of both not-yet having achieved democracy and also having maintained its longest period of democratic elections in its history as a nation. This paper provides an overview of the social, historical, and political factors leading up to communist dictatorship and influencing post-communist transition, with a particular focus on the post-communist political and representative system, including the influence of international policies on the issues related to representation. Coming out of a single-party system, Albania began its journey towards democracy without any experience with a multi-party system, with a political elite that lacked knowledge about how to administer freedom, and with a substantial gap between the perceptions and expectations for democracy and the real capacities and opportunities for achieving democracy in Albania. Understanding this allows us to see that the pitfalls and obstacles Albania has suffered during its long transition are the inevitable result of the limits of the political elite.

This analysis of the political elite in turn allows us to make informed and viable recommendations for advancing democracy in the future.

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In the over one-century-old history of the Albanian State, the period of post-communist political transition is the least studied and discussed in historical, social and political research. Until 1990, research focused on the study of state-formation and the period of Albanian Monarchy; after 1990, the focus shifted to World War II studies, followed by research on the communist period. The constituencies of the two major political parties in Albania continue to debate the legitimacy and legacy of the Albanian Monarchy 1925-1939, the WWII political relations 1939-1944, as well as the legacy of the communist period 1945-1990. These debates constitute a line of demarcation, a *de facto* battleground that draws a dividing line in historical and political studies. A primary example of this is that, almost eight decades after WWII, Albanian society and politics continue to remain divided over the correct date of Albanian liberation (28 or 29 November) as well as on the legacy of the political actors involved. The shift to debates on theses and alternative historical facts (post-1991) is a radical break from the unified official version of theses and historical narratives based on clear ideological criteria (1944-1990) and has resulted in a quite complex and ever-contested socio-political terrain. The space for quality historical studies has been significantly limited by the ways that political parties stake their identities on historical legacy; this both fuels adversarial electoral behaviour in the electoral process and inhibits the capacity to build an open, reflective society, capable of facing its own failures.

This trend, coupled with other factors, has made it difficult to effectively study the period of transition. Other limiting factors include: the fact that the state archive continues to restrict its access to post-1992 documents; the lack of an orientation towards transition studies in university programs in Albania; and the fact that political actors and researchers of the 1990s continue to dominate political and public life. All of these things combined have

relegated studies on Albania's transition to a modest place among the priorities and volumes of historical studies.

A handful of Albanian authors who have focused on the transition have managed to elaborate its phenomena and features in-depth. The most thorough studies have been carried out by authors living outside the country, who have conducted research in the framework of various international projects on Albania and the region. For the most part, however, the bulk of work on transition in Albania, including the political and representative system, economic and social phenomena, etc. can be found reflected in foreign studies, mainly in publications that deal with all East and Southeast European countries, including Albania. The majority of these publications for the last 30 years consist of international periodic reports, which as a whole tend more towards statistics and political report narratives than in-depth professional and comprehensive analyses. While these carry a special value, they cannot take the place of the much-needed novel and thorough approach to studying post-communist transition and developments in Albania.

The studies on transition in post-communist Albania widely accept two factors that significantly impacted the change of the political system in 1990: the impact from the political process taking place in East Europe and the extremely challenging economic situation in the country. The well-known scenes of ships packed with young people headed towards Italy in March or the food crisis during 1990-91 are tell-tale indicators of economic failure and the legacy inherited by the former system. Indeed, the fact that, up until 1990, Albania identified with Stalinism and Marxism, but, since 1991, remains one of the countries displaying the greatest and most consistent support towards the EU and the USA, further testifies to the failure of the political and ideological foundations upon which the communist political system was built and legitimized.

This work offers an overview of the issues of the political system representative of the transition, addressing particularly the great gap between the perceptions of and expectations for the potential outcome of transition. One thesis is that, in the Albanian case, the impact of its

specific historical, social, and political factors limited the real options and capacities to achieve the outcomes people imagined. Albania began its democracy without having democrats, created the multi-party system with only the single-party system as a point of reference, and granted its ruling mandate to a political elite which had been established, raised and promoted within a political system that opposed the open society model. The transition outcomes thus may be considered as the maximum possible that this political elite has to offer, and any other scenario would likely have brought about similar outcomes.

Constitutional Model

Albania is a parliamentary republic. It announced the sanctioning of political pluralism on 17 December 1990, and four months later, in April 1991, it officially abrogated the Constitution of the Socialist People's Republic (1976). Throughout 1991-1998 the state organization was regulated by the Principal Constitutional Provisions, a consensual law package on the governing system, political freedoms, and the organization of the most important institutions. In 1997, following the country's economic collapse, a national referendum on Albania remaining a parliamentary republic or returning to constitutional monarchy reaffirmed Albania's governing principles. Since then, its governing system and principles have been regulated by the 1998 Constitution. In 1991 Albania joined the Organization for Security and Co-operation in Europe (OSCE); in 1995 it became a member of the Council of Europe; in 2009 a NATO member; and, in 2019, the EU Commission approved the opening of accession negotiations. Since the first multi-party election in March 1991, Albania has held 10 parliamentary elections and 8 general local elections; as listed in the Political Party Register in the Tirana District Court, 130 political parties have run in these elections.

Statistically Albania is a country half the size of Croatia and twice the size of Montenegro, with a surface area of 28,748 km.^{2} Albania's population is 2,845,955 (2021) with 98 inhabitants/ km^2, and an average age of 37.6 years (2021). The country's capital, Tirana, hosts 32 percent of the total

population. In 1990, the percentage of the population living in urban areas was 36 percent, whereas for the first time in 2011, the percentage of citizens living in urban areas exceeded the percentage of those living in the rural areas, by 53.5 percent and 46.5 percent respectively. In 2020, this ratio was 61 percent to 39 percent respectively. In 2021 the number of the population born after 1990 reached 1.3 million, or 46 percent of the total population, whereas the number of citizens who were born prior to the end of WWII is just 84 thousand, or 2 percent of the total population. In 1990 the GDP stood at 617$ per capita; in 2020 it was $6,007 per capita, still at the lowest end within the Western Balkan region.

The above data on the political and constitutional position and the economic and demographic indicators sketch the statistical baseline of Albania in transition. But in order to fully understand how transition has played out, it must be underscored that transition in Albania is not simply a process of the change of the system, but also a process of the encounter and fragile co-existence of the concepts of democracy and the rule of law. During the historical period of 1912-1990, Albania had neither experience nor practice with these concepts (with the exception of a brief and frail experience in 1920-1923). The 1913-1914 experiment of establishing a Principality under the protection of foreign, mainly Western, powers enabled the establishment of the state, however without building a foundation for or leaving any traces of its democratic nuances. Besides being under occupation during both world wars, Albania experimented with personalized and authoritarian regimes throughout the Republic and the Monarchy (1925-1939). In 1944-45, following World War II, Albania joined the Soviet Bloc.

Over the course of the communist period, Albania based its advancement on forging ideological and political strategic alliances, initially with Yugoslavia (1944-1948), the USSR (1948-1960), and later with China (1961-1978). In 1968, following the events in Czechoslovakia and viewing the external military intervention as a serious threat and danger, Albania announced its withdrawal from the Warsaw Pact. Following the intensive negotiations of the

Helsinki process, Albania was the only country in Europe that refused to sign the 1975 Helsinki Final Act. While other communist bloc countries were using the human rights language of the Helsinki Accords to gradually loosen state social control, Albania became more isolated and repressive. In the mid-1970s Albania was the only country to practice total self-isolation, constitutionally sanctioning the role of the PLA and Marxist-Leninist philosophy as the governing ideology of state and society. Not surprisingly, Albania was also the last country to leave the communist system. The communist regime, based on the single-party ideological system—a system of violence and terror—lasted until December 1990.

Attempts to shape the new political and governing system stumbled upon several hurdles for a prolonged period of time. The first was the paradoxical situation of the first month of pluralism. In this extremely ambiguous time, the multi-party system co-existed with the 1976 Constitution, which explicitly prohibited it, presenting a serious dilemma for the political system. During this phase, the Communist Party (PLA), which had been governing the country alone from 1945 until 1990, and the Democratic Party (DP), the new anti-communist opposition, agreed on a provisional constitutional basis for the organization of the new political system. The parties held opposing views about the legacy of the past and hence different beliefs about how to shape the future. They were particularly divided over the integration process, private property, and structural reforms. Nonetheless they were unified on two goals: preventing the monopolization of power by one party or individual through the new system and Constitution, and preserving the republican and parliamentary governance system. Lacking any frame of reference for the completely novel idea of power sharing and balance, their work was more the product of individuals' knowledge about democracy that had no basis in citizens' experience and no footprint in state/institutional memory.

During 1991 the opposing political parties established a joint government, the Stability Government, which served to ease political tensions and prepare the political parties for a new political reality in which the PLA

would become the opposition and the DP would come to power. Important laws were adopted over this period, among which were the laws on the depoliticization of the institutions, the law on strikes, on matters of property, on the amnesty of the former politically persecuted, on foreign investments, on the privatization of the economy, etc. These were all initiated because of the political will of the time, but without expertise or a long-term strategic approach. Some of these laws, especially the one on property and privatization, have had an enormous impact through all the subsequent phases of transition.

Following the political rotation of 1992, the foremost political promise was the sanctioning of the political system by a new Constitution. In 1994, after attempts to reach a political consensus on the Constitution of the Republic of Albania (1992-1993) failed, the right-wing majority initiated a people's referendum on a unilateral constitutional draft. The referendum turned into more of a vote of protest against the government rather than a vote of confidence for the constitutional draft, with 53 percent of citizens voting against. In the aftermath of the 1997 political crisis and under international pressure, the new parliament, dominated by a left-wing coalition, initiated the drafting and adoption of the new Constitution.

The Constitution of the Republic of Albania was adopted by referendum in October 1998, despite the opposition's decision to boycott the voting process. The new Constitution was prepared with the assistance of the Venice Commission and through a long consultation process. Its main feature was the attempt to establish a functional governing system, with a strong parliament and honorific President, guaranteeing human rights and establishing independent constitutional institutions and branches of power. The constitutional documents were a mixed product of experiences borrowed from the Italian and German constitutions, characterized by a spirit of interaction among the main institutions, especially in electing high officials and constitutional judges and in sanctioning constitutional checks and balances, the electoral system, representative democracy as a source of sovereignty, and transparency of political party activity. Regardless of

shortcomings noted during its implementation, it remains the best constitutional document since the establishment of the Albanian State.

The Constitution of the Republic of Albania consisted of 183 articles divided into 18 chapters. From 1998-2020, the Constitution has been amended 7 times; currently it has 203 base articles, of which 20 articles are new and 44 amended. In 2016 an annex comprising 10 articles was added to the present Constitution. Thus, in total, over the past two decades, more than one third of the Constitution adopted in 1998 has been amended, and all these amendments were made through parliamentary voting, without going through a referendum. Meanwhile, the Constitutional Court has provided interpretations to the articles and the provisions of the Constitution by issuing 135 decisions. Except for the judicial reform (2016), all other amendments were carried out under the pressure of the political crises of the day and to the benefit of the political interests of the moment. The adoption of the 1998 Constitution and the amendments of 2020 were carried out without political consensus between the majority and the parliamentary opposition.

One of the consequences of the constitutional and legal amendments is the change in the electoral hierarchy of the primary constitutional institutions. With the 1998 Constitution and the subsequent organic laws, a considerable number of institutions, including the President of the Republic, were elected through a race, by secret ballot and with a qualified voting majority (three-fifths). After 2016, all main institutions, including the President, the government, the chair of the State Supreme Audit, General Prosecutor, the Governor of the Bank, constitutional judges, main commissioners, etc. are elected through the minimum of the parliamentary majority (50 percent+1) and with a single candidate, without the need for rivals. The only institution left to be elected by qualified voting (3/5) is the Ombudsman, an institution which stands at the lower end of the constitutional institutions' hierarchy. This passage from elections with rival candidates elected through qualified voting to formal elections, without rival candidates, by a simple majority of MP votes bespeaks the

major political parties' attempts to exercise crucial and preferential influence in electing heads of institutions.

Pursuant to the Constitution, organic laws (over 95 of them) which required qualified legal expertise and a qualified parliamentary majority needed to be approved. The 2016 judicial reform imposed the introduction of a considerable number of new laws, the majority of which also required parliamentary consensus. Even though the Constitution provided for the terms and timelines of the laws and bylaws, most of them, including the new judicial institutions, were adopted or established with evident time delays and not in full compliance with the legal terms. Indeed, some of the main laws underwent continuous changes as a result of legal issues encountered during their implementation. Throughout its activity, the Constitutional Court annulled the special provisions of more than 50 laws, and Albania has lost the majority of over 70 decisions issued by the European Court of Human Rights.

Against this backdrop, it is especially interesting to note that experts' analyses and EU progress reports on Albania are unanimous in assessing that the constitutional and legal frameworks of the transition period provide Albania with a complete legal basis for respecting human rights and implementing the rule of law, despite the gap between legislation and the level of its implementation. The tendency for continuous interventions to the Constitution and base legislation, either to resolve political or institutional crises or to achieve short-term goals, is thus particularly problematic, especially as these interferences have not been productive. Quite the opposite, such practices have brought about a change in relations and competences among institutions and have had direct and destructive impact on the integrity, legitimacy, and productivity of these institutions.

The President, the Government and Local Government

In the political tradition of 1944-1990, the office of the head of the state was a formal one. The real power rested with the first secretary of the PLA, initially Hoxha (1944-1985) and later Alia (1985-1991). With the beginning

of pluralism, the public continued to perceive the head of state as a formality and the party leader as the most important office. It was upon this criterion that Alia and Berisha became presidents.

The constitutional and political position of the President has significantly changed over the years, devolving from a president with great competences during 1991-1998 (Alia, Berisha, Meidani), to presidents with reduced competences during 1998-2008 (Meidani, Moisiu, Topi), to the figure of a President with increasingly honorific competences after 2008 (Topi, Nishani, Meta). The 1998 Constitution prohibited the president from being a political party member or leader, since both Alia and especially Berisha had been previously the factual leaders of their respective political parties. It is interesting that all presidents in Albania, except for Mr. Moisiu, have eyed the return to politics upon the termination of their mandates, either by running as the leader of their supporting parties or by establishing new political parties.

The election of the President of the Republic has primarily been a matter of preferential decision-making by the ruling majority. The only president elected by political consensus and proposed by the opposition was Alfred Moisiu (2002-2007), who, according to the agreement, was elected only after the majority candidate turned down the proposal. The only President to have been elected for two mandates is Sali Berisha (1992-1997 and in 1997); however, he resigned four months after his re-election due to the political crisis and the landslide victory of the opposition party (SP) during the elections. President Rexhep Meidani (1997-2002) is the only president who was a direct representative and leader of the Socialist Party (SP) (Secretary General 1996-1997), whereas presidents Bamir Topi (2007-2012) and Bujar Nishani (2012-2017) were DP proposals and leaders. President Meta (2017-2022) is the only president from a third political party, elected as a result of the conditional parliamentary support of the government during 2013-2017.

Figure 4. Information about the Election of the Presidents of Albania.

	1991	1992	1996	1997	2002	2007	2012	2017
Election rounds	1	1	1	1	1	4	4	4
Candidates	2	1	1	1	1	2	1	1
Vote for (%)	69%	69%	81%	70%	69%	61%	52%	62%

Data from Krasniqi, Afrim, Election of the Albanian President, Institute for Political Studies, https://isp.com.al/wp-content/uploads/2022/05/ISP-Zgjedhja-e-Presidentit-te-Republikes-2022.pdf. Graph prepared by author.

Individual characteristics have been largely reflected in the exercise of the function of the President of the Republic in the Albanian governing system. Among presidents with the same competences (Berisha vs Meidani or Moisiu, Topi, Nishani and Meta), deep contrasts and varied use of the competences and position of the President have been noted. For instance, current president Meta has exercised his right to veto laws far more than all other presidents combined. Save for Presidents Alia and Berisha, who ran the country in tandem with their preferred government cabinets, all other presidents had disagreements and conflicts with the Prime Ministers and their respective governments throughout their mandates. Overall, the source of conflict has not been the Office of the President, but rather the tendency of Prime Ministers and governments to subordinate the office of the President.

The institution of the executive branch (the government) has changed its role and constitutional position even in political life. All prime ministers from 1991-1997 were not leaders of the winning party, but high political officials with political support, whereas the party leaders preferred the role of the President of the Republic. During this period, the president had the competence of convening and running the government cabinet and the right to initiate laws. Following the 1998 Constitution, the government's position changed as the former competences were removed, thus giving the government a more classical role within a parliamentary system. The constitutional amendment of 2008 further changed the relations between the branches of power by introducing the constitutional concept of constructive motion, which seems impossible within a political environment with an absolute majority. Therefore, after 2008, the Prime Minister's position was

significantly strengthened within the political system and, from 2008 until now, no motion of no confidence has been submitted. During the oppositions' parliamentary boycott periods, the role of the government became more prominent by diminishing the role of the parliament, in contradiction to the classical principles of a parliamentary system. The government institution was further strengthened by the fact that, since 2005, only two Prime Ministers have been the heads of Albanian governments (Sali Berisha, DP during 2005-2013 and Edi Rama, SP 2013-present).

Statistical data on the government indicate that, since 2005, the institution of the government has created stability by completing the full 4-year mandates, whereas previously certain governments barely survived 1-2 months. The table on the life span of government cabinets clearly illustrates this.

Figure 5. Duration of Governments 1991–2021 (in months).

Year	Duration of the Government (in months)
1991	2
1991	2.5
1991	1
1991	6
1991	4.5
1992	50
1996	8.5
1997	4
1997	13.5
1998	12
1999	22.5
2002	6
2002	37
2005	48
2009	48
2013	48
2017	48
Average	12

Data from the Government of Albania webpage, www.kryeministria.al. Table by author.

The composition of the government and its relation to the parliament and other branches of power has also altered over the transition years. In 1991-2001, the aim was to appoint the most prominent political party figures to ministry offices, as well as to invite experts to serve in leadership roles, especially in the fields of finance and justice. After the 2000s, governments changed their approach to composing the government by choosing political newcomers for cabinets rather than prominent figures. In the first cabinets following the political rotation in 2005 (DP) and 2013 (SP), ministers, politicians and newcomers who had neither a former political career nor leadership experience were appointed. Furthermore, all cabinets have changed every two years on average, which led to a recycling of ministers—an effective practice for the electoral quotas of the time, but harmful to the stability of institutions and quality of governance. Low political profile cabinets help highlight prime ministers as absolute political leaders, while providing the opportunity for prime ministers to easily control even the potential factions within their political parties.

One of the characteristics of transition governments has been the attempt to establish political coalition even when the majority had the necessary MP numbers to govern alone. Overall, coalitions have been established according to personal preferential bias; over more than 12 coalition governments, there has not been a single case when there was a concrete program agreement between the coalition partners. During the first two decades of the transition period, invitations to join the government had been extended primarily to small parties with local strongholds, as well as to those parties established as a faction of a rival political party. In the past decade, the Socialist Movement for Integration (SMI), a third party created in 2004 when a faction split from the SP, initially imposed a coalition with the DP, and later on with the SP. However, following the SP's single victory in the 2017 and 2021 elections, the governing model has returned to the 1991 practice of single-party rule. The idea of a large reform coalition between the two major parties, SP and DP, is debated every time the country finds itself in the midst of a political crisis, but has actually functioned only

in two cases (1991 and 1997), and then only for a brief 3-6 month transitional period.

Local governance also plays a significant role in the political system. Since 1992, Albania regularly holds local elections, and the office of the mayor continues to be the only institution elected directly through the citizens' vote. During 1991-1992, local governance was shared by agreement among the major political parties, whereas the first legislation on local governance dates from 1992. Albania has changed its administrative division three times, the last being in 2014. Over the course of 1992-2000, Albania had 36 districts, 44 municipalities and 313 communes, a quite high number of local government units for a country the size of Albania. The 2000 reform organized local government into 12 regions, 65 municipalities, and 309 communes, still a high number of local government units. The 2014 reform eliminated the communes, thus organizing the local governance and administration into 12 regions and 61 municipalities. The division into regions further mirrors the regional proportional system applied in parliamentary elections, whereas the division into 61 municipalities created a great disproportion among large centres and small municipalities. For instance, Tirana Municipality has a population of over 850 thousand residents, whereas the smallest municipality, Pustec, has only 3200 residents.

The mayor's office is protected by the Constitution, which provides strong legal support to the representative mandate. Before 1998, the government had the right to suspend and discharge local officials, especially at the district level, a right which it exercised on several occasions, especially in the interest of electoral campaigns. Over the years, the constitutional position has strengthened and institutional guarantees over the mandates have increased. Legislation on local governance has been ever-changing, and currently it creates the basis for guaranteeing local autonomy. However, in the face of social and infrastructural problems, natural disasters, or various economic crises, it has been shown that local government lacks the adequate means and mechanisms available to implement the rights and responsibilities stemming from the legislation. The tendency of central government has been and still is to

exercise its influence in local government, especially on large tourist, infrastructural, and environmental projects, while with regards to education, health, public order, etc. the central government continues to maintain its monopoly.

Over the years, local government has been run in a balanced manner among the two major political parties, thus reflecting more proportionality compared to parliamentary representation. In the 2019 local elections, boycotted by the opposition, the SP won 100 percent of all municipalities, a unique case of unification of the central and local powers, but one that distorted the practice of citizen representation in local governance and political decision-making.

The Party and Electoral System in Albania

On 11 December 1990, Albania allowed political pluralism; the next day, the first non-communist party in Albania, the Democratic Party (DP), was established. It was followed by the establishment of several new political parties, including the Republican Party (RP) in1991, Social-Democratic Party (SDP) in 1992, and the Union for Human Rights in 1992. The latter was a non-official representative of the Greek minority in Albania. At the same time, the PLA had 166 thousand members—5 percent of the total population, the highest percentage since 1944 when the PLA came to power. In June 1991, during the Congress X proceedings, the PLA decided on changing its name, program and leadership team, thus transforming into the Socialist Party (SP). In 2004, due to rivalries within the SP, a faction supporting the former Prime Minister Meta established the Socialist Movement for Integration (SMI). In the past 20 years, political life in Albania has been dominated by the permanent rivalry between the SP and the DP, as well as the symbolic representation of small parties like the SMI, SDP, RP, etc. The DP dominated political life as the majority party for almost 12 years (1992-1997, 2005-2013), while the SP dominated as the majority for around 17 years (1997-2005 and 2013-2021). In 1991 and 1997, for a period of a few months each, the

two parties established joint provisional governments. The SP won the 2021 general election, thus becoming the first political party to secure a third mandate in a row. Referring to the data on the progress of democracy and the country's economic level, the first government mandates following political rotation (1992-1996, 1998-2001, 2005-2009 and 2013-2017) have marked significant progress, in stark contrast to the second mandates, which have been accompanied by deep political crises (1997, 2004, 2011, 2019).

Out of 130 political parties officially active in Albania, only six to seven of them have managed to maintain regular parliamentary representation, either by running on their own or in political coalitions. Except for the SMI (2004), no new political party established over the past two decades has managed to survive or even secure a parliamentary seat. A similar representation ratio is also reflected in local government. The domination of the two major political parties (SP and DP) was due to the massive support received during 1991-1992, the former by inheriting the PLA's electorate and the latter by uniting all anti-communist groupings in a joint front. The two major parties have been the main consumers of power, which they maintain by periodically creating a patronage system extending into and networking through the whole society, significantly obstructing the space of third rival parties. In the last six parliamentary elections in Albania, the winning party has secured the governing majority with nearly 750-770 thousand votes, out of a total of 1.7 or 1.8 million effective voters. Under such conditions, where the major political parties have approximately 100 thousand declared members each and the state remains the primary employer, the main political parties maintain overwhelming control with a patronage system that prevents opening the political system, compromises election standards, and impedes the evolution of a functional democracy.

On the other hand, the two major parties, usually through shared political consensus, have continuously modified the electoral system in the interest of keeping the two-party system and obstructing the entry of political newcomers. Ideological differences among political parties

are minimal; the electorate's behaviour does not rely on the kinds of political identities of 'left' 'right' or 'centre' that more generally define political affiliations in Europe and the US. From 1992 onwards, the right enjoys a strong support in the northern part of the country, whereas the left dominates in the south. These local identifications are inherited from and defined by the communist period and its legacy, during which the northern areas resisted the regime, while the southern areas supported it. These regional identifications have been further strengthened by the regional affiliations of the political leaders in the period of transition, with northerners and southerners more inclined to support leaders from their region. As such, public discourse is almost completely apolitical by western standards, where ideological differences about how to govern do not feature in the discourse of either politicians or their publics. And, while Albanian legislation prohibits parties formed on ethnic, religious, and local bases, these parties nevertheless exist. At the same time, Albania still does not have any nationalist parties or parties critical of European integration.

Organizationally speaking, the political parties have displayed similar trajectories of democratic (or undemocratic) behaviour within the party and in the electoral field. During the first decade of the transition period, each party was characterized by internal competition, featured a political program, and held periodic elections and debates on its orientation and political decision-making. Following the constitutional amendments of 2008, which changed the electoral system from a mixed system to a proportional one with closed lists, the parties similarly devolved to vertical leadership and hierarchical power structures. There has, for example, never been a case in which a party leader lost internal elections due to competition within the party. Quite the opposite: periodic reports monitoring internal party democracy observe that 97 percent of political parties have not held any formal elections in the past two decades.

The two major parties, the SP and the DP, display the same issues: the last electoral race in the SP goes back to 2005, and the last process for electing the leader was in

2009. In parallel, while the DP does hold periodic formal elections, these always confirm the presiding party leader. Similarly, once the leader of the SMI, Ilir Meta, was elected as the President of the Republic (2017), his wife assumed party leadership. Further, while the 1998 Constitution legislated the parties' obligation to disclose their financial expenses, this legal requirement has yet to be implemented. Consequently, the party system continues to remain weak, based on the decision-making of a handful of political leaders, non-transparent both with regards to its operation and political and electoral financing, and based on the patronage system and the use of state resources for the electoral campaigns.

Figure 6. General Information about the Election System in Albania.

Time of the elections	Voter Turnout	No of parties / No of parties with MPs	The winner and second party
Apr-21	46.29%	12 / 4	48,67% vs 39,43%
Jun-17	46.59%	18 / 5	48,34% vs 28,85%
Jun-13	53.31%	66 / 6	41,36% vs 30,63%
Jun-09	50.77%	38 / 5	40,18% vs 40,85%
Jul-05	48.73%	57 / 12	44,06% vs 39,44%
Jun-01	54.95%	38 / 11	41,51% vs 37,63%
Jun-97	72.56%	24 / 14	52,82% vs 25,70%
May-96	89.08%	16 / 5	55,53% vs 20,37%
Mar-92	91.50%	11 /5	57,61% vs 23,87%
Mar-91	98.92%	11 /4	56,17% vs 38,71%

Data taken from The Central Election Commission of Albania (CEC), https://kqz.gov.al/. Graph prepared by author.

Over the course of 30 years, Albania has experimented with several election systems, from the pure majoritarian system in 1991, to a mixed system (1992-2005), and finally to the proportional system (2009-2021). The ratio between the seats in the majoritarian and the proportional and mixed systems has continuously changed, as reflected in Figure. OSCE deems that the constitutional and electoral legislation serves as an adequate basis for holding democratic elections.

The current election system, the closed party-list proportional system, was established by the constitutional amendments of 2008, arguing the need for elite political

representation in parliament. In reality, the 2013 and 2017 elections seated in the parliament questionable individuals from the business sector and some MPs with past criminal records. The quality of representation became so problematic that, in 2015, Parliament accepted the opposition's initiative to adopt Law 138/2015, known as the law on decriminalization. Accordingly, no individuals with criminal records or past sentences from courts in and outside Albania could be elected or appointed to political or public offices. As a result, more than ten MPs lost their mandates due to their criminal records, mostly in European countries to which they had emigrated after the 1990s. Additionally, three mayors, more than 100 local councillors and over 600 medium and top-level officials in central and local government lost their mandates for the same reasons.

Out of ten parliamentary election processes carried out, only 3 of them have produced an outcome accepted by all political parties. All other election processes have been contested, frequently associated with protests or parliamentary boycott. The culture of accepting the election result is still fragile, and elections are broadly viewed as a battle to be won by any means necessary. Because politics rests primarily on the principle of 'the winner takes it all', being in the opposition within the Albanian context oftentimes implies being left out of the decision-making system and taking on the role of the political victim. In 1997, the main political parties agreed on sharing certain parliamentary offices with the opposition, a well-kept tradition, however the political oppositions' ability to curb the majority's abusive political initiatives has been and remains limited. This already limited ability was significantly diminished during 2017-2020 when, as a consequence of vetting in the early stages of justice reform, the country was left without the Constitutional Court. Protesting this radical imbalance and lack of political efficacy, in February 2019 the opposition made an extreme move by collectively giving up their parliamentary mandates.

The election contestation and the parliamentary boycott not only escalated the political conflict between the main parties and their supporters, it also further damaged the legitimacy and functionality of key institutions, including the parliament. Moreover, the contestation

and boycott have resulted in repeated delays in Albania's EU accession process and in the implementation of fundamental reforms in all social and political fields. Such critical elements attest to a frail democracy and inability of political elites to institutionally handle and resolve their disagreements. The application of contestations, protests, and parliamentary boycotts has created a closed circuit for the circulation of elites and rotation of power, which came to pass as a direct result of the failure of the ruling party rather than as a result of a competent opposition. Boycotting is considered as a tool to mobilize support and to keep the majority party in check because opposition leaders lack other political options and structures for balancing power. Boycotting has been even more deeply entrenched because of the lack of internal democracy within political parties and the failure to apply direct democracy in decision making within society.

Figure 7. Information about the Parliamentary Elections in Albania.

Year	No of MPs	The electoral system	Electoral threshold	Accepting / contesting of the elections
1991	250	Majoritarian / two rounds	0	Contested
1992	140	Party-list PR (40) and TRS (100) / With two rounds	4%	Accepted
1996	140	Party-list PR (25) and TRS (115) / With two rounds	4%	Contested
1997	155	Party-list PR (40) and TRS (115) / With two rounds	2%	Contested
2001	140	Party-list PR (40) and TRS (100) / With two rounds	2.50%	Contested
2005	140	Party-list PR (40) and FPTP (100).	2.50%	Accepted
2009	140	Regional proportional system / Closed party-list	3%	Contested
2013	140	Regional proportional system / Closed party-list	3%	Accepted
2017	140	Regional proportional system / Closed party-list	3%	Contested
2021	140	Regional proportional system / Preferential party-list	1%	Contested

Data from the Institute for Political Studies Information Brochure on elections 1991–2021, https://isp.com.al/isp-broshure-informative-mbi-zgjedhjet-ne-shqiperi-1991-2020/.
Graph prepared by author.

The table on election processes in Albania illustrates the citizens' participation in parliamentary elections, the number of political parties running, and the number of parties that have managed to win at least one parliamentary mandate, as well as the percentage of votes for the winning party and the opposition. While the data clearly show that participation in the elections is dwindling, the figures also include all citizens who have the right to vote, and not only those citizens who de facto live in Albania. On the one hand, this may be seen to skew the figures to show a lower voter participation (i.e., that a higher percentage of people residing in Albania voted, and this percentage seems lower because eligible voters not residing in Albania did not vote). On the other hand, these figures point to both the majority party's obstruction of diaspora voting and to the increasing numbers of Albanians leaving the country, both legally and through extralegal channels. Indeed, Albanians are fleeing Albania in greater numbers now than in the last the last two decades, another indication that the people have given up on Albanian institutions ever delivering the democracy for which they have long been waiting.

With regards to the political parties running and those with at least one parliamentary mandate, the table indicates that only the elections of 1997, 2001 and 2005 have more political parties with MPs. In these cases a two-vote system was applied, in which the major parties, while competing in the majority system, delegated their proportional votes to the smaller parties in the coalition with the aim of maximizing mandates. According to the electoral law, the parties that won in the majority system did not win seats in the proportional system. Through calls to the electorate for proportional representation to pass to small allied parties, large parties indirectly gained more seats than the constitutional concept of proportional representation. With such a practice, the SP managed to help small allied parties cross the electoral threshold and, consequently, secure 10 more seats in 2001. In 2005 the two major parties applied the same scheme, but it was the DP that provided the most mandates through the transfer of proportional votes to small allied parties. In the other seven election processes, a constant number of four to five parties represented has been maintained, though, in

reality, only the two major parties have the potential to establish and replace governments. With regards to the percentage of votes over the years, the two major parties have dominated and controlled parliamentary life.

In terms of direct democracy, Albania has a minimal experience in exercising it. Instead, the concept of representative democracy dominates. Over the past 30 years, three national referendums have been held, two pertaining to the Constitution (1994 and 1997) and one on the form of government, monarchy vs republic (1997). Another referendum decreed in December 2013 on the debatable matter of chemical waste importation and management was not conducted due to the political rotation and the decision of the new government to legally resolve such issues. The Constitutional Court and the Central Election Commission have refused several other referendum initiatives, primarily either because of opposing the major political parties or due to political disagreement among the parties.

Political Culture Issues

Politically speaking, the entire transition period has been associated with periodic political crises. Disagreements and conflicts between political leaders have been accompanied by conflict among their support bases and have extended as well into the public domain and the society at large. On certain occasions, political crises have caused difficult situations for the country. In 1991 and 1997, for example, political conflict required international military missions to assist Albania to restore public order and provide basic services to the population. Other moments of harsh conflict, acts of violence, and brutal behaviour by the authorities towards their critics include the arrest of SP leader Fatos Nano in 1993, the murder of opposition politician Azem Hajdari in 1998, the killing of four citizens in Shkodra supporting the opposition in 1991, and, two decades later, another four killed in Tirana. The second source of political crisis remains the conflict over election legitimacy and protests contesting elections. Similar critical situations emerged in 1991, 1996, 1997, 2000, 2001, 2009, 2011, 2015, 2017 and 2019.

All these political crises feature talks and political agreements entered into between the very same political leaders who created the crises in the first place. This feature of leaders producing and resolving crises while the country and its citizens pay the exorbitantly high price for politicians' behaviour—politically, economically, and by having their image as Albanians tarnished—owes to the fact that, overall, the transition period has been dominated by 5 names (Sali Berisha, Fatos Nano, Edi Rama, Ilir Meta, Lulzim Basha): these party leaders continuously shift from opposition to power and vice versa, resulting in a constant recycling of the same political and power elites. Four of the above figures have lived and studied abroad, all are politicians with long careers and wide political recognition, two of them hold the highest academic titles as professors in their fields, and yet periodic surveys show that citizens consider them the main source of transition failures. All are characterized by a boundless ambition for personal power, all are unable or unwilling to resolve disputes through institutions, to display political maturity, to foster political dialogue, or to be transparent and accountable to citizens.

One of the features of the political transformation of 1990-1992 was the lack of a revolution or of a process of deep political changes. In the Albanian case, pluralism followed Huntington's analysis of the internal process of displacing power elites: the critical part of the PLA displaced the conservative group and took political leadership of the country. All political parties established during 1990-1991, including the opposition ones, had former PLA members as their leaders—leaders who had been disappointed and so took up new political views. Since 1991 when political pluralism took shape, the major political parties have shut down critical thought, both within their ranks and from others. They have been mired in perpetual conflict and use the power stemming from political parties as an unrestricted right. At the same time, the full responsibility for transition failures does not begin and end with political leaders alone, but rests also with their main source of legitimacy, electoral support. According to the Albanian Institute for Statistics (INSTAT), over 90 percent of voters in the multi-party elections of the first decade

of the transition period had also been the primary voter base during the communist period. Hence, pluralism can be seen as an extenuation of one-party political culture, multiplied by the creation of new parties.

This deficit in political culture and democratic formation stems primarily from the detrimental legacies of the communist dictatorship. Such detrimental beliefs that have persisted throughout the transition period include: that the state holds unlimited power; that power is the only source of privilege, career and well-being; that personal success is interdependent on family and tribal success; that being critical of political decision-making leads to the majority distancing itself from you; and that civic action has value only when supported by one of the major political parties. Compounding these problems, many post-transition realities have distorted public perception about democracy by showing the people that individuals who have power, wealth, and public influence because of power and wealth are the models of 'success' in a democracy. Some of the most pernicious realities creating this distortion include: the lack of a fair and clear separation from the past; the granting of immunity and amnesty to all individuals responsible for the repression and failures of the communist system; universal poverty and the thirst for rapid enrichment; individuals treating public assets as their own; and critical problems formalising the economy, including disproportionately taxing the lower and middle classes while enabling the wealthy to evade taxation.

Under these circumstances, political culture has become one of distancing from and denying responsibility and creating alibis for the failures of transition. The most typical case of this is the debate on the 'predetermined transition', a thesis which permeates public debate. This thesis—promulgated by a considerable number of Tirana-based researchers—continuously refers to the transition in Albania as a process that was determined in a strategic document approved in the meeting, under Gorbachev's leadership, of communist parties in Katowice (Poland) in 1987. According to a document that has been circulating for years in the media and in various publications in Tirana, this meeting laid down a detailed roadmap that communist countries, including Albania, would follow

for the transition to a multiparty system, as well as the strategy for controlling economic power and public life during the implementation of the new system. The main thesis supported by this document is that most of the erroneous transition decisions owe to this strategy, and that the democratic and representative process itself has been predetermined and formal. Further research on doctoral theses defended at the University of Tirana from 2016-2020 indicates that the 'Katowice argument' has been included as scientific theory in three doctoral theses, being accepted as such by both scientific leaders and university scientific evaluation commissions—this despite the fact that all reference sources, archival documents, and research efforts have concluded that there is no such document or predetermining strategy for the progress of transformation and transition.

The ease with which such fictitious theses circulate and their inclusion in scientific research studies on transition indicate both that Albanian society continues to attribute responsibility for its failures to external factors and that the public and political elite both need to create an alibi for failures rather than take responsibility for them. Projecting blame and refusing responsibility are exacerbated by the critically low level of democratic formation in Albanian society. The creation of alibis as political theories, their use in the interest of the politics of the day, and their reiteration until the creators themselves begin to believe them, remains a feature of political elites before and after 1990. In all cases, the responsibility is transferred to a third party, mainly an international party, i.e. an outside and uncontrollable political power, thus leading to an inevitable and predetermined outcome.

Another aspect greatly influencing political culture is the relationship between international forces and institutions and Albania's political elite and local institutions. For example, when US Secretary of State James Baker visited Tirana in June 1991, about 100 thousand citizens gathered in Tirana's central square to greet him. Thereafter the USA has enjoyed massive support in Albania, and US representatives have maintained a dominant position in the hierarchy of influence in the political decision making

of Albania. The same assessments can be made for the presence of the EU and its individual states, especially Germany. As attested by their programs and national security documents, political parties are in unison in their assessment of the EU and the US as strategic allies and see no alternative alliance options. Such definitions, attitudes and rhetoric create the idea that political Albania is an 'obedient student', loyal to the West.

Several studies have analysed this formal definition and illustrated how political elites manipulate perceptions of US–EU alliances to their advantage. While the debate over whether the Albanian political elite considers the West a crucial and inspiring role model or simply uses popular support for the West as a tool for short-term electoral and political purposes is ongoing, several factors seem clear. First, the EU and the US have been and remain supporters of establishing and strengthening the democratic system and the rule of law in Albania, as well as of any integration progress and reform aimed at aligning standards with the EU. Since Albania has not achieved its goals, and its progress has been far less than the needs and expectations of its citizens, it can be inferred that the political elite has not managed to apply Western advice or to capitalize on timely and quality Western investments in the country and society. A more detailed analysis, however, shows that Western support for the country has translated into personal support in the race for internal power; consequently, whenever internal political goals have gone contrary to Western advice or requests, the advice and requests have been rejected by the very same politicians who represent parties and programs whose relations with the West are their absolute priority. This has contributed to periodic political and electoral crises, worrying levels of corruption, and cases of violating the principles of democratic governance. Parallel to this, whenever certain politicians and parties have been the object of international criticism, they have employed the concept of sovereignty, criticism of the EU, and the alibi and legitimacy gained by party supporters in the country. At the same time, whenever they have been the object of international support, the very same individuals have sought to further expand their

power rather than democracy for citizens. The thesis 'they love the country, but want it for themselves, love the West, but want it on their side' aptly describes such political behaviours.

On the other hand, the public widely agrees that western influence and presence have been and remain crucial and necessary in Albania. In the overall perception, relations with the West are regarded as the source of yet-to-be-achieved standards of democracy and rule of law, i.e., in the interests of Albanians who aspire to the goals of democracy. However, these perceptions are oftentimes confronted with changes in regional and geopolitical priorities coming from the western chancelleries themselves. For instance, throughout 1991-2000, the main message of Western countries in Albania was the need for democracy and reform, while over the past two decades the priority has shifted to the need for governance and social stability. If, in the first phase of the transition up to the Thessaloniki Summit (2003), the primary argument was the need for EU integration of the Western Balkans, and Albania as part thereof, in the following period the conditions changed; the arguments were redeveloped and a clear integration perspective is still lacking. At the same time, positive pressure for results and standards has not always matched the internal needs of society, especially the qualitative expectations of the younger generations. As a case in point, a massive student protest in December 2018 against the political establishment failed when it did not receive any Western support. Despite the fact that the student protest reflected a much higher quality of protest compared to the periodic protests of political party militants, Western actors withheld support precisely because the protest focused on abuses of the political establishment.

Domestic politics' ill-use of the integration process and the Western partnership has made the topic of integration no longer an electoral topic, i.e., it no longer inspires voters, and the perception that politicians are an obstacle to integration is gaining increasing support. This is exacerbated by the paradox of Western criticism of Albania's failures and continued support of the elite

responsible for those failures. At one and the same time, Western critics' main complaints about Albania's major failures and problems are directed at the political elite, yet the very same political elite, legitimated by their representative mandate, are the main Western partners in Albania.

Reference Models and Albania's Path

One of the predominant debates about the political system, political culture, and the ways these have affected the outcome of transition in Albania centres around the dilemma of whether we are dealing with a unique Albanian experience or whether the Albanian experience is similar to that of other countries in the region. The theory of Albania being a special case has been one of the preferred ones since 1988, when the communist regime sought relations with the West without meeting the minimum standards of reforming the system, allowing pluralism, and transitioning to democracy. The thesis 'Albania is unique, we are neither East nor West', became a slogan and was prominent in every public place, in official speeches, and in the official media of the time. The same thesis has been used after the 1990s in response to criticism of the inadequate progress of reforms and establishing the rule of law. Viewed from different perspectives, both arguments are right. The problems of the transition period justified the communist regime's argument that Albanian society was not prepared to exercise competitive and functional democracy, even though that very regime was directly responsible for this. Furthermore, transition politicians are right when they recall the fact that Albania has had a repressive regime and a system of state violence far more extreme than Yugoslavia, Hungary, Poland, Bulgaria, and even Romania.

Studies on the effects of the past on the transition process have also revealed some unique facts. In the first place, Albania had no internal dissent during the communist period, no civil or religious groups, no government in exile, and no social strata resisting the regime. Examples of the extreme form of communism Albania applied that annihilated all possibility of internal dissent include:

the decision to pursue a path, unique in the region, of complete national isolation; severing relations with both the East and the West; banning religious institutions and belief in God; and enshrining in the Constitution the role of the PLA as the leading party of state and society. Despite such specifications, the essential question about transition returns to how Albania compares to other forms of communism in the region. Non-aligned Yugoslavia differs from all of the countries in the region, not just Albania, in that it followed a third path outside the Soviet sphere and was more liberal than the classical communist regimes. However, Albania bears similarities with Bulgaria on how the first two years, 1990-1991, of political system change unfolded; it also bears similarities with Romania on how that country also pursued an independent course from Moscow in the 1970s, although fundamental differences existed between them. Numerous studies, especially by foreign authors, compare state violence under dictator Hoxha to state violence under dictator Ceau escu; despite these similarities, these authors fail to account for fundamental differences in the regimes, such as the fact that Hoxha pursued an isolationist path while Ceau escu opened Romania to the world, including the West. The Romanian dictator paid high-level visits to major Western capitals and was received with high personal honours, whereas Hoxha, up to his death, did not allow any political or trade exchanges with these countries.

Despite these differences, it is worth noting that post-communist reforms in Bulgaria, Romania and Albania share numerous elements, with different outcomes. Each of these countries experienced an exchange and displacement of political elites rather than the radical form of a revolution that changed ruling elites. In all cases, the first democratic governments implemented profound reforms, which had inconsistencies between political support and their political costs. Political rotations in each country also brought a new energy to the economy and society. These similarities justify making an analysis of classical reforms as they were applied in all former communist countries an essential subject matter of comparative studies. At the same time, the countries' political and governing

systems differ, especially when taking into account other factors (e.g., the impact of the war in Bosnia and later in Kosovo). Additional differences to consider include: the level of functioning state structure, the level of civic reaction to political dissatisfaction, the level to which clan and clientelist relations determined who benefitted from economic resources and political decision-making, the level of informality in the economy, and the influence of external political and strategic actors.

Lastly, despite aspects of transition that Albania has in common with other countries in the region, it is widely accepted that, when talking about Albania's current state of political affairs and the outcomes of transition to date, a significant fact should not be ignored: Albania began its transition process in a desert of political ideas and democratic concepts, amidst the crises of famine and mass exodus to the West. Despite this, after 30 years Albania has managed to create institutions and has a sufficient legal basis to make these institutions functional and stable. Albania has a constitution and mechanisms for the protection of human rights and constitutional principles, it has a functioning parliament and government, it holds regular elections, it has a civil society, pluralism, and media independence. In recent years, Albania has been implementing a profound reform imposed by the US and the EU, i.e. justice reform, while the state and society are satisfying most of their responsibilities to the citizens. For a people who have come through what Albania has come through, these are significant achievements.

The transition in Albania cannot be viewed in black and white terms, but must rather be seen in shades of grey, as a mutable process that reflects a myriad of maximum and often utopian expectations, limited capacities, missed opportunities and delayed historical processes that simultaneously coexist with the great energy of a society that seeks change and wants to make up for lost time. Any comparative historical report would certainly draw the same conclusion—despite all of its flaws, the post-communist period remains the best historical period of the Albanian state and society and represents the best period of relations with democracy, the rule of law, and the West.

In this comparative context, it must be taken into account that the current stage of rule of law and level of democracy roughly reflects the maximum achievement so far possible for a transitional political elite and a fragile society like Albania. How could two generations of citizens raised and educated under a violent system, deprived of liberty, be expected to encounter the multiple difficulties of a free and open society, as well as to establish and guarantee higher standards of freedom for themselves and others? The road to democracy is a long one, and, as recent years show us, fraught with obstacles for even long-established democratic states. On this long road, Albania continues its journey.

[1] For more in-depth research regarding post-communist transition in Albania, see *Biberaj, Elez*: Albania in Transition: The Rocky Road to Democracy. New York: Routledge, 2019; *Vickers, Miranda / Pettifer, James*: Albania: From Anarchy to Balkan Identity. New York: New York University Press, 1997; *Rama, Shenasi (ed.)*: The End of Communist Rule in Albania: Political Change and The Role of The Student Movement. New York: Routledge, 2019; *Abrahams, Fred*: Modern Albania: From Dictatorship to Democracy in Europe. New York: New York University Press, 2015; *de Waal, Clarissa*: *Albania:* Portrait of a Country in Transition. New York: I. B. Tauris, 2014; *Pano, Nicholas*: The Process of Democratization in Albania. In: Dawisha, Karen / Parrott, Bruce (eds.): Politics, Power, and the Struggle for Democracy in South-East Europe. Cambridge: Cambridge University Press, 1997.

[2] For an overview of this literature, see *Wolchik, Sharon L. / Curry, Jane Leftwich (eds.)*: Central and East European Politics: From Communism to Democracy. Washington, D.C.: Rowman & Littlefield, 2011; *Schmidt-Neke, Michael*: Das Politische System Albanien. In: Ismayr, Wolfgang (ed.): Die politischen Systeme Osteuropas. Berlin: Springer-Verlag, 2002. For dedicated publications and references on transition, see *Shcrapel, Thomas / Papa, Enriketa / Pinari, Andi, (eds.)*: The Call for Freedom: Studies on Totalitarianism and Transition in Albania. Berlin: Konrad-Adenauer-Stiftung, 2016.

Among Albanian researchers who have carried out and published partial or whole studies on transition are Afrim Krasniqi, see especially *Krasniqi, Afrim*: Shqipëria dhe Europa Juglindore në Periudhën Paskomuniste (Albania and Southeast Europe in the Post-Communist Period). Tiranë: University of Tirana, 2012. https://unitir.edu.al/doktoratura-afrim-krasniqi-fakulteti-i-histori-filologjise-departamenti-i-historise/ (last accessed: 4 March, 2024), along with *Rama, Shenasi (ed.)*: The End of Communist Rule in Albania: Political Change and the Role of the Student Movement. New York: Routledge, 2019; *Kalemaj, Ilir*: A Difficult Transition for Albania: The Saga's Unfinished History. Tiranë: University of New York, Tirana, 2017; *Gjuraj, Tonin*: Nova *Demokratia. Tiranë: European University of Tirana Press, 2015; Lami, Roland:* Ndërkombëtarët dhe Partitokracia në Shqipëri (Internationals and Partitocracy in Albania). *Tiranë: European University of Tirana Press,* 2020; *and Adelina, Nexhipi*: Aspekte të Tranzicionit në Shqipëri (Aspects of Transition in Albania), History and Philology doctoral dissertation, University of Tirana, 2018.

https://www.researchgate.net/profile/Adelina-Nexhipi/publication/329375084_Aspekte_te_tranzicionit_politik_ne_Shqiperi/links/5cd3eafe92851c4eab8c7d48/Aspekte-te-tranzicionit-politik-ne-Shqiperi.pdf (last accessed: 28 February, 2024).

Several politicians have published their own memoirs and reflections on the period of transition. For memoirs by former presidents, see *Alia, Ramiz*: Jeta Ime (My Life)**.** Tiranë: Toena, 2010; *Meidani, Rexhep*: Mbi Qeverisjen (On Governance). Tiranë: Botimet Dudaj, 2009; *Moisiuz, Alfred*: Midis Nanos dhe Berishës (In-between Nano and Berisha). Tiranë: Botuesi Toena, 2009; and *Bamir Topi*: Nocturn: Kur Arsyeja Errësohet nga Pushteti (Nocturn: When Reason is Obscured by Power). Tiranë: European University of Tirana Press, 2019.

For memoirs by former Prime Ministers, see *Bufi, Ylli:* Në Fillimet e Tranzicionit (The Beginnings of the Transition). Tiranë: European University of Tirana Press, 2016; *Meksi, Aleksander:* Dhjetor '90, Dokumente e Materiale (December '90, Documents and Materials). Tiranë: European University of Tirana Press, 2010. *Fino, Bashkim:* Humnerë '97: Rrëfimi i një Kryeministri (Abyss 1997: The Confession of a Prime Minister). Tiranë: Edisud, 2007; and *Rama, Edi:* Kurban (Sacrifice). Tiranë: Botimet Dudaj, 2011. For memoirs by former Speaker of the Parliament Servet Pëllumbi, see *Pëllumbi, Servet*: Pluralizmi Politik (Political Pluralism). Tiranë: Instituti I Sociologjise, 2006; and *Pëllumbi, Servet*: Dritëhije të Tranzicionit (Transition Contrasts). Tiranë: Shtepia I Botuese Rinia, 2000.

Other politicians who have published memoirs include *Ngjela, Spartak*: Përkulja dhe Rënia e Tiranisë Shqiptare, 1957–2010 (The Decline and Fall of Albanian Tyranny, 1957–2010). Tiranë: Shtepia e Librit, 2012; *Zogaj, Preç*: Institucionet e Tranzicionit (Institutions of Transition). Tiranë: European University of Tirana Press, 2009; *Angjeli, Anastas*: Ditari i Tranzicionit Ekonomik (A Journal of Economic Transition). Tiranë: Kristalina–KH, 2013; and *Shahollari, Luan*: Në Tunelin e Tranzicionit (Within the Tunnel of Transition). Tiranë: Emal, 2009.

[3] A series of surveys and studies on transition in Albania highlight the significant difference between expectation and outcomes as well as the high level of disappointment and pessimistic feelings about the present and near future. The latest survey by the Institute for Democracy and Mediation indicates that none of the main powers and local institutions enjoy more than 25 percent public support (*IDM:* Trust in Governance 2020: IDM Public Opinion Poll, 12 September 2020. https://idmalbania.org/public-opinion-poll-trust-in-governance-2020/ [last accessed: 28 February, 2024]). Similarly, Balkan Barometer reported that Albania experienced a sharp decline of optimistic sentiment for the future, from 56 percent in 2014 to 20 percent in 2021 (Regional Cooperation Council Balkan Barometer 2021 Public Opinion Analytical Report, June 2021, s.29. https://www.rcc.int/download/docs/Balkan_Barometer_Public_opinon_2021v4.pdf/58fbdb4eeb4187c20349f83f23b0048b.pdf (last accessed: 28 February, 2024).

[4] *Institute for Political Studies*: Partitë Politike në Shqipëri: Baza Ligjore, Demokracia e Brendshme, Problematika të Funksionimit, të Vendimmarrjes dhe të Përfaqësimit (Political Parties in Albania: Legal Basis, Internal Democracy, Problems of Functioning, Decision-making and Representation), 2021. https://isp.com.al/partite-politike-ne-shqiperi-baza-ligjore-pritshmeria-qytetare-dhe-sfidat-kryesore-te-reformimit/ (last accessed: 28 February, 2024).

[5] *Albanian Institute of Statistics (INSTAT)*: Albania Population 2021. http://www.instat.gov.al/al/.

[6] *Idem.:* Albania Population 1999 and Albania Population 2021**.** http://www.instat.gov.al/al/.

[7] *World Bank*: Data about Albania, https://data.worldbank.org/indicator/Albania (last accessed: 28 February, 2024).

[8] Article 1 of the 1976 Albanian Constitution defines Albania as Socialist People's Republic; Article 2 defines Albania as a 'state of the proletarian dictatorship'; and Article 3 defines the Party of Labour of Albania as the leading force in Albanian society and the Albanian state. The Constitution of the Peoples Socialist Republic of Albania. European University Institute Global Citizenship Observatory. https://data.globalcit.eu/NationalDB/docs/ALB 1976.pdf (last accessed: 28 February, 2024).

[9] *Bufi, Ylli*: Ne Fillimet e Tranzicionit. Tiranë: UET Press, 2016.

[10] *Krasniqi, Afrim*: The Elections in Albania, 1991–2009**.** Tiranë: Konica Color, 2009, p. 76.

[11] *Loloçi, Krenar*: Debati Kushtetues Vëllimi 1 dhe 2. Tiranë: OSCE, 2008.

[12] *Krasniqi, Afrim*: Kushtetuta e RSH: Nje Histori e (pa)Perfunduar Tranzicioni (Constitution of the Republic of Albania: A History of [un]Completed Transition*). In:* Kuvendi 2018 / Volume 9, 2018, number 41, p. 31-42.

[13] *Constitutional Court of the Republic of Albania*: Vendime (Decisions). See http://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php (last accessed: 28 February, 2024).

[14] For instance, the Criminal Code, one of the most important laws for granting justice, was amended twenty times from 1998 to 2000, including three times over the past year. The 1991 electoral legislation was amended in 1992, 1993, 1995, 1996, 1997, 1999, 2000, and 2002, leading to the adoption of an integral law, the Electoral Code (2003), which was further amended in 2005, 2007, 2008, 2010, 2011, 2013, 2015, 2017, and twice in 2020. Law No. 9920 (2008) on Tax Procedures has been amended nineteen times from 2009 to 2021; Law No. 9482 (2006) on Legalization, Urbanization, and Integration of Illegal Construction has been amended twelve times, etc.

[15] All decisions can be read on the State Bar of Albania website, http://www.avokaturashtetit.gov.al/vendimet-e-strasburgut/vendimet-e-gjykates-evropiane-per-te-drejtave-te-njeriut-strasburg (last accessed: 28 February, 2024).

[16] A conflict escalation led to two parliamentary initiatives during 2019–2021 to remove the President of the Republic from office, one of which turned into a decision and reviewed by the Constitutional Court.

[17] The 1998 Draft Constitution of Albania, Article 104, has foreseen as follows: 'If a motion of confidence presented by the Prime Minister is refused by a majority of all members of the assembly, the assembly within 15 days chooses another premier. In this case, the President appoints the new Prime Minister'. In: The International Constitutional Law (ICL) Project. https://www.servat.unibe.ch/icl/al01000_.html (last accessed: 28 February 2024). The concept of motion of confidence is amended in the 2008 Constitution as follows: 'The Premier has

the right to present a motion of confidence to the Assembly for the Council of Ministers. If this motion of confidence is voted by less than half of all members of the Assembly, the Premier within 48 hours from the motion vote asks the President of Republic to dissolve the Assembly. … [The] President dissolves the Assembly within 10 days from receiving the request. The confidence motion request cannot be presented during the analysing period of the confidence motion, according to article 105'. In: Constitute: The World's Constitutions to Read, Search, and Compare. https://www.constituteproject.org/constitution/Albania_2008 (last accessed: 28 February, 2024).

[18] The author elaborates the information based on date of decree for every prime minister of Albania.

[19] *Krasniqi, Afrim*: Partite Politike ne Shqiperi, 1920–2006 (Political Parties in Albania, 1920–2006). Tirane: Institute for Political Studies, 2007, p. 254.

[20] *Idem*: Sistemet Politike ne Shqiperi, 1912–2008 (Political Systems in Albania, 1912–2008). Tiranë: UFO Press, 2009, p. 364.

[21] Information is based on *Central Election Commission (CEC)*: Electoral Zones 2021. http://kqz.gov.al/zgjedhje-per-kuvendin/.

[22] *Krasniqi, Afrim:* The Elections in Albania, 1991–2009. Tiranë: Konica Color, 2009, p. 95. For additional analysis, see *Hahimali, Agron*: Qeverisja Vendore në Shqipëri (Local Governance in Albania). Tiranë: Albanian Association of Municipalities, 2019. https://portavendore.al/wp-content/uploads/2019/06/Qeverisja-vendore-ne-Shqiperi.pdf (last accessed: 28 February, 2024).

[23] The Socialist Party (SP), Democratic Party (DP), and the Socialist Movement for Integration (SMI) have had a regular parliamentary representation, whereas the Social-Democrat Party (SDP), the Republican Party (RP) the Justice, Unity and Integration Party (JUIP), and the Union for Human Rights Party (UHRP) have secured periodical symbolic representation either due to their own activity or indirectly through coalitions.

[24] Information from the *Central Election Commission (CEC)*: Electoral Zones. In the 2021 election, the SP won with 768,134 votes, slightly more than the 764,791 votes with which they won the election.

[25] *Institute for Political Studies*: Kurba Kritike e Anëtarësimit në PD dhe Problemi i të Dhënave Fiktive të Partisë (Critical Membership Curve in DP and the Problem of Fictitious Party Data), 27 May 2021. https://isp.com.al/kurba-kritike-e-anetaresise-ne-pd-dhe-problematika-e-te-dhenave-fiktive-te-partive/ (last accessed: 29 February, 2024).

[26] Idem., Broshure Informatione mbi Zgjedhjet ne Shqiperi (Information Brochure on Elections in Albania), 2021. http://isp.com.al/index.php/2020/11/13/isp-broshure-informative-mbi-zgjedhjet-ne-shqiperi-1991-2020/ (last accessed: 29 February, 2024

[27] Idem., Procesi i Dekriminalizimit: 5 Vjet më pas. Raport, 10–12 (Process of Decriminalization: Five Years Later), 2020. http://dekriminalizimi.isp.com.al/index.php/2020/02/09/2015-2020-bilanci-dhe-sfidat-e-dekriminalizimit/ (last accessed: 29 February, 2024).

[28] *Bertelsmann Transformation Index (BTI):* Albania Country Report, 2014. https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2014_ALB.pdf (last accessed: 29 February, 2024), p. 15.

[29] The decision brought about the resignation of 58 opposition MPs. Only 3 MPs refused the political order, whereas 37 mandates were replaced with candidates who had been included in the multi-name lists of the DP and SMI, mainly small party leaders within the coalition or individuals lacking political experience. During 2019–2021 therefore the parliament functioned only with 122 out of 140 MPs, but without the participation of the main political opposition.

[30] *Westminster Foundation for Democracy*: Parliamentary Boycotts in the Western Balkans: Case Study Albania, 2022, p. 29. https://www.wfd.org/sites/default/files/2022-05/wfd-wb-boycotts.pdf (last accessed: 29 February, 2024).

[31] *Huntington, Samuel P.:* The Third Wave: Democratization in the Late Twentieth Century. Norman: University of Oklahoma Press, 1993.

[32] *INSTAT*: Albania Population 2021.

[33] The most prominent of them is the philosopher Servet Pëllumbi, who in 1993–1996 had been deputy and leader of the Socialist Party and later served as MP for several mandates as well as speaker of parliament from 2002 to 2005. He defended the authenticity of the document in his book *Pëllumbi, Servet*: The Fall of 'Communism'. Tirane: UET Press, 2016.

[34] During the embassy crisis in July 1990, the regime's principal argument was the existence of an international conspiracy against Albania, a thesis that of course is not affirmed by any of the documents of that period. Similar alibis of a pre-determined international plan for change in Albania were also employed in the 1996 election crisis, in the dramatic events of 1997, and in the political crisis of 2004 and 2017—in each case without any reference sources and without any evidence.

[35] See the *EU*: Western Balkans Summit: Full Declaration. Thessaloniki, 21 June 2003. https://ec.europa.eu/commission/presscorner/detail/en/PRES_03_163 (last accessed: 29 February, 2024).

[36] *Krasniqi, Afrim:* Përpjekjet e PPSH për Imponimin e Zgjedhjeve Formale dhe 'Pluralizmin e Masave' Gjatë Vitit 1990 (PPSH Efforts to Impose Formal Elections and 'Mass Pluralism' during 1990). In: Instituti i Historisë, Akademisë së Studimeve Albanologjike. Tiranë: Studime Historik, 2018 / Volume 1, number 2, 2018, p. 273.

Chapter 5

Effective Democracy in Post-Communist Albania

Ina K. Zhupa

Abstract

This chapter uses research and theories on effective democracy to ask to what extent Albania has been able to implement a fully democratic system. Moving beyond a simplistic understanding of democracy as a system with forms, structures, processes, and mechanisms that allow citizens to exercise decision-making influence on governance, the effective democracy analysis measures to what extent citizens are actually at the centre of government decision making. Following Alexander, Inglehart and Welzel's methodology, which factors both the Democratic Rights Index and the Rule of Law Index to measure the level of effective democracy in a country, we find that, after 30 years of transition, Albania is a 'false democracy' (as defined by Alexander, Inglehart and Welzel, or, according to Freedom House's measures, a hybrid regime). An effective democracy analysis for the three decades of democratic transition in Albania reveals that there has, in fact, been no constant decline or increase trend, but rather a decline-increase variation. Data show that, in each annual political rotation, regardless of which political party takes power, the public has perceived improvement in the rule of law

and the fight against corruption. Within this general pattern, watershed years marking a change in Prosecutor General and legislation on justice reform amplify, both positively and negatively, public perception. These two factors—rotation in political party power and the dismissal and replacement of the Albanian Prosecutor General—thus serve as anchors within a general trend that illuminate patterns of corruption and endemic problems with a functional rule of law that have compromised the essential conditions for effective democracy in Albania. This analysis is important for those of us who are called to serve in public office: we must re-dedicate ourselves to forging the fully functioning, effective democracy that those who came out of the regime have been unable to manifest.

* * *

Democracy is a political system wherein everyone (the people) participates or is entitled to participate in decision-making regarding significant public policy issues. Within this larger rubric, this analysis focuses on effective democracy, which is based on the principle of judging and measuring the actual ability of this system to empower the common citizens. Following Holden's definition of democracy as power in the hands of the people, this article understands democracy to mean that, at least in terms of the power to vote, the political equality of individuals depends upon every person being able to directly exercise the power s/he holds as a citizen of a democratic government.

While there is a great deal of discussion about the forms and functions of democratic governance, scholars of effective democracy focus on the potential of a country to truly strengthen and make functional the rights of the common citizens, their role in decision-making, in governance, and ensuring equal treatment under the law. However, as we have seen over and over in recent years, the mere existence of laws that formally provide for political and civil rights is not sufficient to guarantee those rights and so empower the citizen. Similarly, the mere fact that a country holds elections does not necessarily mean that those elections are actually free or fair, or that it is the citizens' free exercise of democratic rights that decides and elects the government and

its respective programs. These are precisely the reasons that make it necessary to study the level of effective democracy in a given society, that is, to understand how much power the citizens actually have and the extent to which democracy fulfils its mission as the 'power of the people'. While Darin Barney regards democracy as a system in which citizens fully participate as equals in the decision-making processes of governance for the common good and in the public interest, Carol Gould argues that 'governance in a democracy is actually self-governance through participation and representation in the decision-making process'. However scholars nuance this relationship between the people and government, all agree that democracies are presumed as being centred on the citizen, the common people or the sovereign people.

Robert Dahl believes that the democratic system performs better than other forms of governance because the people, exercising control through the ballot box, elect those who will make the best decisions on their behalf. Citizens maintain ultimate control by being able to vote out of office those who fail to represent them, which results in more favourable conditions for the citizens and less tyranny in government. David Held goes even further in his belief, where he sees that democracy allows citizens a greater participation than just voting; it enables participation through membership in political parties, pressure groups, trade unions, protests, etc. For both Dahl and Held, the citizen is truly at the centre of the system, which yields effective democracy.

Analyses of effective democracy move beyond the mechanisms and processes of citizen participation in the forms and structures of governance to ask whether or not, and how, the citizen is actually at the centre of those governments considered democracies and if the conditions of citizen participation actually fit within the contours of effective democracy. As we see today, many countries with democratic systems, particularly new democracies, are seen as widely affected by corruption and lacking a functional rule of law, which in turn compromises the essential conditions for effective democracy. This has given rise to a scholarly focus on the insufficiency of electoral democracy, hybrid democracy, authoritarian democracy, and other false forms of democracy. According to Welzel and Inglehart, such false

forms of democracy result in the preferences of the majority being widely ignored by the political elite. This is a far cry from the ideal of democracy as a political system in which citizens exercise decision-making influence on governance. This analysis will therefore focus specifically on the concept of effective democracy in Albania, how it is measured, and the degree to which Albania has (or has not) achieved this.

Methodology

Albania, unfortunately, has yet to realize a democratic system in which the citizen is truly at the centre. Albania joined the ranks of world democracies on 31 March 1991, when it held the first pluralistic elections. However, organizing pluralistic elections which allowed new political parties to compete could not automatically bring a government of the people, by the people, to a nation that had endured totalitarian one-party rule for nearly half a century. While elections did bring a new political force into power, the Democratic Party, neither the new party nor the Albanian population could magically overcome the traumatic legacies of communist dictatorship overnight.

In order to measure the level of effective democracy experienced by Albanian citizens, this chapter uses reports, documents and data published by Freedom House and the World Bank, processing them in accordance with the method provided by authors Alexander, Inglehart and Welzel. While other measures exist, Freedom House and World Bank reports are standard points of reference for democracy measures world-wide, and their data sets are publicly available online. I have thus chosen these measures for their ubiquity and ease of reference.

I measure effective democracy in accordance with Alexander, Inglehart and Welzel's methodology, which conjoins the Democratic Rights Index (hereafter DRI) in a given country and the Rule of Law Index (hereafter RLI). In order to obtain the Effective Democracy Index (EDI), Alexander, Inglehart and Welzel add the Democratic Rights Index and the Rule of Law Index together, where EDI = DRI + RLI. According to this calculation, democratic rights and the rule of law are weighted equally and have equal impact on the final sum and final classification of effective democracy in

the country being analysed. The lowest score is 0 (completely absent and non-functional) and the highest 100 (fully effective). Effective democracy thus requires both democratic rights and rule of law, and measuring its effectiveness requires both indicators.

To measure democratic rights, Alexander, Inglehart, and Welzel use Freedom House's classification of freedoms. The classification of freedoms is based on two Freedom House indicators: the 'Civil Liberties' ratings indicate mostly private freedoms that represent autonomy rights; and the 'Political Rights' ratings indicate public freedoms, reflecting participation rights. The following table shows how Freedom House Ratings may be transformed into a Democratic Rights Index.

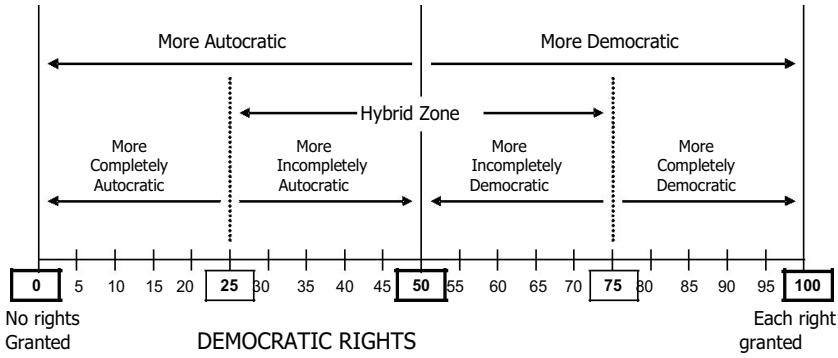
Figure 8. Transformation of Freedom House's Classifications of Freedoms into a Democratic Rights Index.

Classification Freedom House	Civil Liberties (CLR)	Political Rights (PRR)	Added Ratings CLR + PRR	Inversion and zero-basing: 14 – (CLR + PRR)	Percent standardization (DRI): (14 – (CLR+ PRR))/0.12
Free	1	1	2	12	100
	1 (2)	2 (1)	3	11	91.66
	2	2	4	10	83.33
	2 (3)	3 (2)	5	9	75
Partly free	3	3	6	8	66.66
	3 (4)	4 (3)	7	7	58.33
	4	4	8	6	50
	4 (5)	5 (4)	9	5	41.66
	5	5	10	4	33.33
Unfree	5 (6)	6 (5)	11	3	25
	6	6	12	2	16.66
	6 (7)	7 (6)	13	1	8.33
	7	7	14	0	0

Data for the first 3 columns taken from Freedom House's Country Reports 1991-2019, available at https://freedomhouse.org/country/albania/. Columns four and five calculate DRI index, in accordance with the method provided by Alexander, Inglehart and Welzel, from Freedom House's data. Calculations by the author.

Based on this classification, they compiled the democracy scheme as a percentage of democratic rights granted by the state.

Figure 9. Classification of Countries by Rights Granted.



Data from Freedom House's Country Reports 1991-2019, available at https://freedomhouse.org/country/Albania; preceding table, Figure 8, Political Rights and Civil Liberties. Calculations in accordance with the method provided by Alexander, Inglehart and Welzel. Calculations by author.

The most encompassing measure of the rule of law available is the Rule of Law Index by the World Bank. Based on expert judgment and population surveys 'this index measures how strictly government agents abide by the laws'. Strongly overlapping with the rule of law is another World Bank indicator, the Control of Corruption Index. Corruption control is an integral facet of the rule of law, and, given that it is linked to abuse of power, also crucial to analyses of effective democracy. Alexander, Inglehart, and Welzel average these two indexes in order to obtain what they refer to as the Rule of Law Index (RLI). They transformed the measurement scale of the World Bank into a range starting at 0, for the weakest Rule of Law observed since the index was established in 1996, up to 1.0 for the strongest rule of law ever observed. Scores between these two extremes may be any fraction of 1.0. In order to obtain the RLI from the World Bank data in the range between 0 and 1.0, the formula factors the lowest ever observed score (LOS) and highest ever observed score (HOS) recorded by the World bank with the observed score for the country being analysed (COS). The formula to obtain the RLI is thus: RLI = (COS-LOS)/(HOS-LOS).

By multiplying the DRI, ranging in value from 0 to 100, by the RLI, ranging in value from 0 to 1.0, we can obtain the Effective Democracy Index (EDI).

Political Rights and Civil Liberties, Democratic Rights Index in Albania 1991-2019

First, let's determine the DRI for each year based on the Freedom House reports.

Figure 10. Calculation of Democratic Rights Index for Albania 1991–2019.

Year Albania	Civil Liberties	Political Rights	Added Ratings	Inversion and zero-basing:	DRI
1991	4	4	8	6	50
1992	3	4	7	7	58.33
1993	4	2	6	8	66.66
1994	4	3	7	7	58.33
1995	4	3	7	7	58.33
1996	4	4	8	6	50
1997	4	4	8	6	50
1998	5	4	9	5	41.66
1999	5	4	9	5	41.66
2000	5	4	9	5	41.66
2001	4	3	7	7	58.33
2002	4	3	7	7	58.33
2003	3	3	6	8	66.66
2004	3	3	6	8	66.66
2005	3	3	6	8	66.66
2006	3	3	6	8	66.66
2007	3	3	6	8	66.66
2008	3	3	6	8	66.66
2009	3	3	6	8	66.66
2010	3	3	6	8	66.66
2011	3	3	6	8	66.66
2012	3	3	6	8	66.66
2013	3	3	6	8	66.66
2014	3	3	6	8	66.66
2015	3	3	6	8	66.66
2016	3	3	6	8	66.66
2017	3	3	6	8	66.66
2018	3	3	6	8	66.66
2019	5	3	8	6	50

Data for the first three columns from Freedom House's Country Reports Albania 1991-2019, available at https://freedomhouse.org/country/albania. Columns four and five calculate DRI index, in accordance with the method provided by Alexander, Inglehart and Welzel, from Freedom House's data. Calculations by author.

Figure 11. Simplified Democratic Rights Index (Political Rights and Civil Liberties), 1991–2019.

Year Albania	DRI
1991	50
1992	58.33
1993	66.66
1994	58.33
1995	58.33
1996	50
1997	50
1998	41.66
1999	41.66
2000	41.66
2001	58.33
2002	58.33
2003	66.66
2004	66.66
2005	66.66
2006	66.66
2007	66.66
2008	66.66
2009	66.66
2010	66.66
2011	66.66
2012	66.66
2013	66.66
2014	66.66
2015	66.66
2016	66.66
2017	66.66
2018	66.66
2019	50

Final figures extracted from the preceding table (Figure 10), Political Rights and Civil Liberties, to show the fluctuation of Democratic Rights Index in Albania. Table compiled by author.

Based on the analysis of data on political rights and civil liberties, Albanians have enjoyed such rights and liberties to an average extent, with the highest rating being 66.66 and the lowest being 50 percent. In the 30 years of transition, we have yet to achieve a full or close-to-the-maximum rating regarding our political rights and civil liberties. The most problematic years with the lowest rating of political rights and civil liberties of citizens were 1998, 1999, and 2000 at 41.66 percent -- the years of economic collapse and recovery from the Ponzi schemes that shook the nation and created civil unrest that temporarily left the people without a government. The years with an average rating of 50 percent—1991, 1996, 1997, and 2019—span the entire period of transition: the first year of transition from totalitarian dictatorship to pluralist free-market; the two years leading up to the economic collapse; and, after 15 years at the 66.66 percent threshold, a sharp decline in 2019. From 2003–2018, Albania had a steady rating of 66.66 percent, indicating an incomplete democracy that has held steady but stalled in its progress towards advancing democracy.

Other chapters in this volume elucidate and analyse the transition events to which I refer in more historical and political detail, so, for the purposes of this chapter, I highlight the key events, discussed elsewhere, that correlate with significant changes in Albania's DRI. In 1991, Ramiz Alia allowed the first pluralistic elections to take place, which is why this year is classified as a democratic year despite the many difficulties involved in transitioning a one-party totalitarian rule to a multi-party electoral field. There were widespread protests across the country when the Party of Labour 'won' the election; in the city of Shkodra, state forces killed protestors Arben Broci, Besnik Bishanaku, Nazmi Kryeziu and Besnik Ceka on April 2nd following the elections. Thirty others were injured. Protests over unfair elections and the Party of Labour's continuing hold on power were offset in the DRI score by the release of political prisoners imprisoned for agitation and propaganda, which was perceived as a positive step that placed economic and political rights in a middle ground.

In 1992, the political rights and civil liberties rating improved to 58.33 percent. Key events correlating with this

improvement include the 22 March 1992 election, won by the opposition Democratic Party (DP). The DP, led by Sali Berisha, was founded by students and professors in December 1990. The DP wone 92 of the 150 seats in parliament, marking the most radical change in Albanian politics since Enver Hoxha consolidated dictatorship. The DP and the promise of change were celebrated both within Albania and by the international players involved in Albania's transition.

The DRI score jumped again in 1993, from 58.33 to 66.66 percent. The year was notable for the increase in the number of political parties and the foundation and registration of civil society organizations, independent trade unions and student groups, none of which were allowed under the regime. The rise of a broad range of such groups was seen as an indicator of freedom for a country that had just exited communism. At the same time, significant political turmoil continued within the country. On 30 July 1993, Fatos Nano, leader of the Socialist Party (the newly transformed Party of Labour from the communist regime), was arrested on accusations of abusing the humanitarian aid provided by the Italian government. The socialists considered their leader innocent; Nano was labelled a political prisoner and from that point on the SP focused its political agenda around Nano's imprisonment. When Fatos Nano was imprisoned, he assigned the party leadership to Servet Pëllumbi, Gramoz Ruçi, Ilir Meta, Namik Dokle and Luan Hajdaraga. The Freedom House rating classifies 1993 as the best transition year as regards political rights, and it is the only time the country has received a rating of 2.

The promise of 1993's increased rating was, however, short-lived; in 1994, Freedom House dropped the rating back to 58.33 percent. This is the year that Sali Berisha, President of Albania at the time, attempted to strengthen his personal power. Mr. Berisha did not welcome criticism, and many journalists were punished for libelling the President. Meanwhile, the opposition party leader, Fatos Nano, remained imprisoned, and the former communist president, Ramiz Alia, was sentenced on 21 May 1994 for abuse of power. With both Nano and Alia in jail, the SP leadership was shared amongst Servet Pëllumbi, Gramoz Ruçi, Ilir Meta, Namik Dokle and Luan Hajdaraga. 1994 was also notable for the referendum to amend the constitution and assign greater power to the

president. Berisha was personally invested in passing the referendum, however, in November of 1994, the referendum rejected these constitutional amendments.

The year 1995 continued along the same trajectory; the November 1994 rejection of the new constitution influenced the entire political sphere through 1995. The Social-Democrats and the Democratic Alliance Party criticized the draft constitution for giving the power to the President to appoint and dismiss the Prime Minister, ministers, and judges in addition to leading the Supreme Court. While the terms of the constitution were being hashed out, President Berisha dismissed the Supreme Court Chief Justice Mr. Zef Brozi, thus raising serious questions regarding the independence of the judiciary in the country. In March of that same year, Berisha arranged the dismissal of Eduart Selami, leader of the Democratic Party at the time, because the latter had opposed the competences that the new constitution would assign to Sali Berisha as President. In June, Filip Cakulli, director of the satirical magazine 'Hosteni', was apprehended by SHIK (National Intelligence Service) for authorizing a magazine cover mocking the President; he was then released upon agreeing to change the cover. Internal political power struggles notwithstanding, the Council of Europe accepted Albania's membership application in June 1995, and, on 13 July, Albania became a Council of Europe (CoE) member. This event caused the country to maintain the freedom rating of 58.33 percent, leaning in the direction of democracy, despite the attempts to consolidate power in the presidency, lack of freedom of the press, and the lack of judiciary independence. These factors were off-set by the belief that CoE membership would drive the country towards democratic principles and standards, consolidation of democratic institutions, and the observance of human rights and the rule of the law.

Albania's DRI fell again in 1996, to a rating of 50 percent for political rights and civil liberties. Problems with central and local elections—both of which went to the Democratic Party—were followed by a series of anti-government protests which, by the end of the year, escalated with the fall of the pyramid schemes. Approximately two-thirds of the population invested in these schemes which, at their peak, had liabilities amounting to approximately half of the country's GDP. When the schemes

collapsed, the people who had invested lost everything; their despair and rage brought widespread rioting that toppled the government and killed nearly 2 thousand people.

In 1997, Albania wavered between dictatorship and democracy. Mass protests took place across the country and territorial control by the police was impossible. The weapon depots were opened and looted, Albanians were armed, and many notorious gangs had taken control of several territories and exercised their criminal activity. The country declared a state of emergency. On 3 March 1997, during the state of emergency, the parliament re-elected Mr. Berisha for a second mandate as President. The people opposed his re-election. Devastated by the economic collapse, they blamed Berisha because, during his presidential speech, he had assured them of the 'legitimacy' of pyramid schemes. The political situation continued to deteriorate; people took over military installations and police stations, blockaded the roads, and the country descended into anarchy. The leader of the Socialist Party, Fatos Nano, was released from prison, and the Socialist Party introduced a crisis resolution platform. On 12 March 1997, President Berisha decreed the Government of National Reconciliation under the leadership of Bashkim Fino, a socialist party member from Gjirokastra. This was followed by the implementation of a platform to stabilize the country and request for international assistance. In March, former Austrian Chancellor Franz Vranitzky led a delegation from the Organisation for Security and Cooperation in Europe to help restore peace and to prepare for and monitor new elections. By April, the UN Security Council had authorized a multi-national protection force to re-secure the country, ensure delivery of humanitarian assistance, and facilitate the Organization for Security and Co-operation in Europe (OSCE) mission. Albania held new elections in June, which the Socialist Party won; SP Chair Fatos Nano, recently released from jail, became Prime Minister. On 24 July, the socialist majority elected Rexhep Meidani as the new President, and Mr. Berisha, now former President, returned to the Democratic Party as its leader, a position he held until 2013 when he resigned.

Interestingly, the years 1998–2000 had the lowest political rights rating, 41.66 percent, in Albania's post-

communist transition—even lower than that of 1997, when the country underwent civil war. The low DRI rating was in part due to the instability of the Socialist government during those years, compounded by the instability facing Albania and the region due to the war in Kosovo. In addition, Azem Hajdari, a significant figure in the Democratic Party, was murdered in 1988. His murder caused further political tumult, causing Fatos Nano to flee in fear for his life and leaving the opposition, under the leadership of Sali Berisha, to take over several institutions, including the Prime Minister's Office. In the midst of ongoing political crisis, Albania held the constitutional referendum in 1998; despite the opposition boycott, the new constitution was adopted. Immediately afterwards, an influx of refugees fleeing the 1999 war in Kosovo sought refuge in Albania. Refugee camps were set up, providing aid and shelter, and many Albanian families welcomed Kosovo Albanians into their homes.

In the wake of economic collapse, anarchy, and the Kosovo war, and still making its way out of the most brutal communist dictatorship in Southeast Europe, Albania faced even more political uncertainty in the year 2000. Between 1998–2002, the SP had already replaced three Prime Ministers: Fatos Nano gave way to Pandeli Majko, who was ultimately replaced by Ilir Meta. Local elections were held in that same year, which were won largely by the Socialist Party. The SP win in the capital city, Tirana, placed Edi Rama as Mayor. During this time, PM Ilir Meta inaugurated numerous governmental changes. Not surprisingly, the political rights and civil liberties ratings for those years were the lowest ever measured in Albania, sinking to 5 (unfree) on a scale of 1–7 (where, as referenced above, 1–2 are free, 3–4/5 are partly free, and 5/6(7 are unfree).

In 2001, with general elections in a four-round election period (June to August 2001), Albania saw an improvement in political rights and civil liberties ratings. The SP won the general elections, claiming 73 out of 140 seats, while the DP and its allies obtained 46 seats. As with all previous elections, election irregularities (including violations of party rights and manipulation of the vote throughout the country) resulted in election contests. More than 15 of the SP parliamentary seats were granted by decisions of the Constitutional Court, and

the Democratic Party, under the leadership of Sali Berisha, boycotted parliament in protest against irregularities observed during the elections. They did not return to the parliament until January of 2002.

As difficult as the transition years 1991–2002 were, 2002 was an even more strange political year in Albania. On the one hand, harsh power struggles and confrontations within the ruling SP were counter-balanced by significant compromises between the Socialist Party and the opposition Democratic Party which had just ended its parliamentary boycott. The SP internal conflict resulted in a bizarre rotation of power that inversely mirrored the 1997–2002 power rotations: Meta, who had held the PM office 1998–2002, was replaced by Majko in February 2002; Majko had held the office for only 5 months when, in July 2002, party leader Fatos Nano replaced him. In the meantime, the OSCE report on the 2001 elections came out; it highlighted several issues, including the DP parliamentary boycott and its ongoing boycott (from October of 2000) of the municipal councils of socialist-majority cities. Following negotiations with the majority, the DP entered parliament in January 2002. Negotiations included investigation of the 2001 elections and an agreement that the President would be elected by mutual consensus. Additionally, the State Intelligence Service Director was replaced. Additionally, by decision of the Albanian Assembly, the Prosecutor General, Mr. Arben Rakipi, was dismissed.

After more than a decade of enormous upheaval, 2003 saw an improvement in the political rights and civil liberties ratings, in large part as a result of several institutions, selected by political agreement, working independently from the government. During this year, political rights and civil liberties received a rating of 3, resulting in a Democratic Rights Index of 66.66, thus positioning the country as an emerging democracy and alongside consolidated democracies. Until 2019, and despite multiple political crises and rotations, Albania has maintained a consistent 66.66 rating, showing neither significant improvement nor any sudden decrease in the political rights and civil liberties of Albanians.

Despite being constant as regards rights and liberties, it is important to highlight some of the key events that affected political rights and civil liberties during the years 2003–2019.

Following the 2003 local elections, in which the SP won the majority of municipalities, people were growing increasingly discontent with the government, particularly in regard to corruption. In that same year, the European Union agreed to initiate negotiations for the Stabilization and Association Agreement with Albania, a first step towards the wish and aim of Albania to join the European Union. While Albania had come quite close to signing the Stabilization Agreement in 1996, the events of 1996-1997 derailed negotiations and prevented the signing. The 2003 SAA agreement positively impacted relations between the EU and Albania.

Improvement in ratings notwithstanding, political conflict persisted throughout 2004–2005. The long internal conflict within the Socialist Party resulted in the party splitting; Ilir Meta, a prominent party figure who had held posts as Prime Minister and Chair of the Socialist Party, left the SP and created the third-party Socialist Movement for Integration (SMI), taking with him a group of Members of Parliament and key supporters. This meant that the left wing also had to compete against Meta's split-off SMI, while Edi Rama, Mayor of Tirana, appeared to be secretly working against Fatos Nano to take over the Socialist Party and permanently remove Nano from power. While Rama was plotting a way to beat his competition within the Socialist Party, Nano was campaigning under the slogan 'Protect the Future'. Meanwhile, DP opposition leader Sali Berisha organized a series of peaceful protests against irregularities in the 2003 local elections, particularly the manipulation of voter lists. The OSCE election report confirmed DP complaints about electoral violations.

Amidst this backdrop, the DP party undertook considerable changes; party figures that had left due to being discontent with Berisha returned and formed the Policies Orientation Committee (KOP). Under the slogan 'Time for Change', this group of intellectuals and new party members developed a coherent program for political reform. By the time of the 2005 parliamentary elections, the DP, previously in opposition, was able to win the majority and, as a result, Sali Berisha became Prime Minister. The SP went into opposition, and SMI obtained its first seats in parliament and representation in the Assembly. The 2005

elections were the first elections to go uncontested in Albania, and this despite the issues observed by Organization for Security and Co-operation in Europe (OSCE) / Office for Democratic Institutions and Human Rights (ODIHR). But the 2005 political rotations extended beyond the DP moving uncontested into the majority. Fatos Nano resigned as Chair of the Socialist Party, which necessitated internal elections to appoint the new leader. On each of the Socialist Congress days, the voting was entirely different. On the first day, the platform of changes presented by Edi Rama was rejected, indicating that he would lose the election, but, on the next day, he won and was elected the leader of the Socialist Party.

2006 was the first year of Mr. Berisha's mandate as Prime Minister, and the political rights and civil liberties rating remained at 66.66. That same year, following several significant reforms and completing a highly detailed questionnaire by the EU, Albania signed the Stabilization and Association Agreement, a milestone in the journey towards entering the European Union. The next local elections took place in 2007, organized for the first time by the DP government led by Mr. Berisha. The Democratic Party won the majority of municipalities, however it failed to win the powerful Municipality of Tirana. DP candidate and Cabinet Minister Sokol Olldashi ran against incumbent Mayor and Socialist Party leader Edi Rama, and Rama's win strengthened Rama's power within the Socialist Party. 2006 also brought the election of Bamir Topi, Deputy Leader of the Democratic Party, as President of the Republic. This was the first bi-partisan election of a president. Election required a special majority of 84 votes, which the Democratic Party lacked, but six Socialist Party MPs diverged from official party position and voted for Topi. Topi ran for president against former Socialist Party leader and Prime Minister Fatos Nano, but, given his recent ousting from SP leadership, his Party did not officially support him. This opened the door for the 6 SP votes intended for Nano to go to Topi, thus preventing early elections as provided for in the Constitution. The 6 renegade MPs were removed from the Socialist Party parliamentary group and the group leader, Ben Blushi, resigned.

While the political rights and civil liberties ratings remained steady during 2008, several key events bear

mentioning. Most significantly, the DP majority and the SP opposition mutually agreed to constitutional amendments that 'transformed the mixed voting system into a regional proportional system'; wrote the Central Election Commission out of the Constitution entirely; assigned a mandate for the Prosecutor General; and changed the local governance mandate term from three years to four. However, the most 'substantial change of the constitutional package of 2008 concerned the election of the President of the Republic and the position of the Prime Minister in regard to the Parliament. The President's election model changed from a special majority to simple majority voting in the last two rounds, thus considerably reducing the power and role of the President in the political and institutional life of the country'. This expanded the Prime Minister's control over the Parliament. The only party that openly opposed these constitutional amendments was the Socialist Movement for Integration party led by Ilir Meta.

2009 was the first parliamentary election held under the new system as provided under the constitutional amendments agreed upon by the two main political parties. The DP won the elections but, with only 70 seats, had to negotiate a coalition with the SMI. For the first time since its founding in 2004, Meta's Socialist Movement for Integration moved out of the opposition and into a coalition with the majority. The Socialist Party opposed the election result, demanded a recount of votes, and began a long opposition under the slogan 'Open the Ballot Boxes'. The SP subsequently boycotted parliament, including staging a hunger strike that lasted until May 2010. Despite the opposition protests, 2009 brought some milestones for Albania. In March 2009 Albania, under the Berisha government, earned NATO membership, a significant achievement that would aid the Democratic Party in winning the next round of local elections. The Berisha government also worked towards visa liberalization reforms, including implementing biometric passports, tightening border control, and prohibiting illegal motorboat crossings. All of these were positive achievements for the country.

While the civil liberties ranking remained unchanged in 2010, Albanian citizens enjoyed the feeling of expanded liberties when they were finally allowed to travel without visas

to European Union countries. The visa liberalization achieved by Mr. Berisha's government in 2010 was one of the most significant events for citizens, comprising a tangible aspect of what constituted the European dream. For the first time since the communist dictatorship closed Albania's borders and virtually imprisoned Albanians in the country, citizens were able to travel abroad. The euphoria of visa liberalization was dampened in 2011 when an opposition SP protest turned violent. The popular television show, Fiks Fare, broadcast a video recorded by SMI minister Dritan Prifti in which he and SMI leader Ilir Meta appear to be discussing bribes for a hydropower plant concession tender. The SP protested, and, on 21 January, violence escalated and four people lost their lives. To date, no investigation has revealed what actually happened that day or who was responsible for the shootings. In the 2010 local elections, Rama lost the Tirana mayorship to DP Chair Lulzim Basha. Basha had previously served in Berisha's cabinet as Minister of Public Works, Transport, and Telecommunications and subsequently as Minister of Interior, a post which he held during the January 2011 protests.

As with previous years, Albania's 2012 political rights and civil liberties rating remained constant at 66.66 percent. The year was, however, marked by a significant increase in Democratic Party members' appointments as heads of various institutions. Minister of Interior Bujar Nishani was elected President with a simple majority of 71 votes. With the Presidency and the Government aligned, Visho Ajazi was elected the Director of State Intelligence Service and Adriatik Llala confirmed as Prosecutor General. Against the backdrop of these political alignments, the 2013 parliamentary elections brought another rotation of political power; the SMI broke its coalition with the DP and aligned with the SP, which gave the 2013 elections to the SMI-SP coalition and brought Edi Rama to power as Prime Minister. Ilir Meta took over as Assembly Speaker, and Sali Berisha resigned as leader of the Democratic Party. A competition for DP party leadership emerged between Sokol Olldashi and Lulzim Basha, with Basha winning by a landslide.

In 2014—still with a 66.66 percent political rights and civil liberties rating—Albania received EU candidate country status. While there was no actual increase in rights and

liberties, Albanians feel any qualitative step towards EU integration like an achievement as regards political rights and civil liberties. At the same time, the positive feeling from achieving EU candidate status came along with one of the most significant events of 2014, the initiation of territorial reform by the governing majority. The Democratic Party requested that the local government reform begin with decentralization and autonomy, and for these to form the basis of a study on territorial division. The majority and opposition could not agree, leading to the opposition's parliamentary committee boycott. In September, the majority approved, without consensus, the territorial reform plan, thus dividing the country into electoral divisions without taking into account their history, proximity or traditions associated with a given administrative unit.

Tensions increased in 2015, when the DP opposition brought public attention to the high number of Socialist Party MPs with criminal records. This became the focal point of a nearly year-long campaign to raise awareness amongst citizens and the international community about public officials with past convictions or outstanding warrants for criminal activity. The campaign, including a boycott of parliament, brought international actors to the negotiations, following which the majority was persuaded to adopt the law on decriminalization. This law brings more transparency—and hence greater control—to the background of those proposed for government and public offices, which has had a positive impact on both political rights and civil liberties of the Albanians. In the 2015 local elections, partners, especially the US Embassy, demanded that political forces enforce the law and prohibit people with questionable backgrounds from entering the elections.

While the decriminalisation law has begun to have positive effects, it has not yet been fully implemented and several high-profile cases of government officials, especially in the SP ranks, continue to plague political culture. A key example of this is the exponential growth in drug trafficking, and the symbol of government-sponsored drug trafficking in Albania is Samir Tahiri. Tahiri, a close personal friend of PM Rama, served as Minister of Interior 2013–2017; wiretaps from an Italian police investigation of the Habilaj gang for

drug trafficking implicated Tahiri, who is the cousin of Habilaj gang members. Tahiri's Habilaj cousins were arrested in Italy, but the SP majority blocked investigations into evidence of Tahiri's involvement. A fierce political battle ensued between the opposition DP, calling for investigation into Tahiri's use of the Albanian police force in criminal drug trafficking, and the SP Majority, who refused to lift Tahiri's immunity and protected him from prosecution.

Decriminalization has been at the heart of DP protests since 2015 and defined the opposition position in the 2017 and 2021 parliamentary elections. In addition to the ongoing imbrication of state forces in drug trafficking, the opposition has decried criminal activity in voter repression, vote-buying, and organised criminal networks interfering in the electoral process. A number of such cases have become national symbols, such as the infamous vote-buying case in Dibra, popularly known as 'Dossier 184', and the 2017 SP rigging of elections through vote-buying, voter intimidation, and bribes. In protest of escalating criminal activity sponsored by the SP, the DP threatened to boycott the 2017 general elections; with the assistance of international negotiators, the DP ended the boycott and participated in the elections, which the SP, predictably, took. During negotiations, the SP government elected Ilir Meta, Speaker of the Parliament and Chair of the SMI, as President of the Republic. The DP entered parliament, with criminal cases against SP officials and functionaries ongoing, and continue to maintain that the government bought the elections with a range of criminal acts.

Throughout 2018, the DP continued to call for investigations into criminal electoral tampering and the SP majority continued to obstruct investigations; the situation erupted in February 2019 when the DP and SMI burned their mandates in protest. The parliament subsequently functioned with only 122 MPs, short of the 140 quota. The boycott and failure to bring forward investigations of criminal tampering in the electoral process had drastic effects on the 2019 local elections. The President and Parliament squared off, with the President decreeing that elections would be postponed and the Parliament insisting they would go forward. Parliament prevailed, and no opposition candidates were on the ballot in the 2019 elections, which, with only SP sanctioned contenders,

placed the entire country under the control of the Socialist Party. In tandem with all of this, the many problems plaguing justice reform decimated the courts. With members and candidates unable to pass vetting, the Constitutional Court was dismantled, leaving the opposition with no legal recourse to hold the SP majority accountable. For the first time since the communist dictatorship ruled the country, Albanians again endured one-party elections, without a constitutional court, and with a parliament in violation of the constitution.

Similar issues plagued the 2021 general elections, which seated SP leader Edi Rama in his 3rd term as PM. Thus, while the civil liberties and political rights rating remained constant at 66.66 percent throughout 2018, these serious problems with state-sponsored crime and corruption deeply influenced political life and will continue to do so until decriminalisation and anti-corruption measures are fully implemented. The first sign that the international community may finally be recognizing how badly Albania's progress towards sustainable democracy has been eroded in these last years came with the 2019 rating that placed Albania at its lowest point since the first 1991 rating: with a score of 50 points on the DRI, Albania is once again on the threshold between dictatorship and democracy.

The Rule of Law and the Fight Against Corruption—Rule of Law Index 1996-2018

As referenced above, to derive the Rule of Law Index (RLI) from World Bank (WB) data on the rule of law and level of corruption, the lowest observed score (LOS) for all countries evaluated since inception is subtracted from the country's observed score (COS) for that year, and then divided by the sum of the HOS minus the LOS. The formula, RLI = (COS-LOS)/(HOS-LOS), shows the level of functioning rule of law on a scale from 0–1. Unlike the Freedom House reports, the World Bank reports for these two indicators begins in 1996 and continues biennially thereafter until 2002; after which the reports are made annually. Using WB data and Alexander, Inglehart, and Welzel's formula, Albania's RLI can be calculated as follows:

Figure 12. Calculation of Albania Rule of Law Index 1996–2018.

Year	COS	LOS	HOS	RLI
1996	19.35	2.69	43.01	0.41
1997	Not measured	Not measured	nm	nm
1998	19.5	8	32.5	0.47
1999	Not measured	Not measured	Not measured	nm
2000	18.81	7.43	29.7	0.51
2001	Not measured	Not measured	Not measured	nm
2002	21.05	9.52	33.81	0.47
2003	21.53	11.9	34.29	0.43
2004	26.32	15.24	38.1	0.48
2005	25.84	14.29	36.67	0.51
2006	27.75	17.14	40	0.46
2007	27.75	18.1	41.43	0.41
2008	32.69	20.57	41.63	0.57
2009	36.49	25.47	45.75	0.54
2010	40.76	30.66	48.58	0.56
2011	38.97	29.91	47.66	0.51
2012	35	27	45	0.44
2013	39.44	27.7	45.54	0.57
2014	43.27	32.69	52.4	0.54
2015	43.27	32.69	52.4	0.54
2016	44.23	32.69	53.85	0.55
2017	41.83	31.25	51.92	0.51
2018	38.94	29.33	48.08	0.51

Data from World Bank reports on Albania 1996-2018, available at https://databank.worldbank.org/databases/rule-of-law, and calculated in accordance with the method provided by Alexander, Inglehart and Welzel. Table compiled by author.

Figure 13. Simplified Albania Rule of Law Index 1996–2018.

Year	RLI
1996	0.41
1997	nm
1998	0.47
1999	nm
2000	0.51
2001	nm
2002	0.47
2003	0.43
2004	0.48
2005	0.51

2006	0.46
2007	0.41
2008	0.57
2009	0.54
2010	0.56
2011	0.51
2012	0.44
2013	0.57
2014	0.54
2015	0.54
2016	0.55
2017	0.51
2018	0.51

Final figures extracted from the Calculation of Rule of Law table (Figure 12, above), to show the fluctuation of Rule of Law in Albania. Table prepared by author.

Based on the above data, it should be noted that there is no constant decline or increase trend, but rather a decline-increase variation. Also note that, as the World Bank indexes are generated from public opinion polls, these data represent the public's perception. Scores below 0.50 indicate the lack of the rule of law. The years that mark the highest level of perceived corruption and the lowest rule of law, at a score of 0.41, are 1996 and 2007. Conversely, the years with the lowest level of perceived corruption and with the highest rule of law, at a score of 0.57 points, are 2008 and 2013. We have never exceeded a score of 0.57, which is just slightly above the .50 measure indicating the absence of the rule of law. At the time of Albania's highest scores, the DP was the majority in government, with DP Leader Sali Berisha as PM.

In the following analysis of the public's changing perception of rule of law and corruption, two factors emerge as having significant impact: rotation in political party power and the dismissal and replacement of the Albanian Prosecutor General. First, over-arching trends. Data show that, in each annual political rotation, regardless of which political party takes power, the public has perceived improvement in the rule of law and the fight against corruption. The first records date back to 1996, with a score of .41 when the DP was in power. By 1998, when the left-wing rotated into power, the score rose to 0.48. Similarly, in 2004-2005, when the DP rotated back

into power, the score improved from 0.48 in 2004 to 0.51 in 2005. This pattern repeats in the 2012—2013 rotation that brought the SP back to power, with an even greater rise, from .44 in 2012 to .57 in 2013.

Within this general pattern, watershed years marking a change in Prosecutor General and legislation on justice reform amplify, both positively and negatively, public perception. For example, in November 2007 Prosecutor General Theodhori Sollaku was dismissed, replaced by Ina Rama. While Sali Berisha's DP government was in power, Sollaku was disliked by and on poor terms with the majority. Personal relationships notwithstanding, Marku, a favourite of the left-wing opposition, took over, and perception of rule of law and corruption rose from .41 in 2007 to .57 in 2008. A similar scenario evolved in 2012, at the end of Rama's term as Prosecutor General of Albania. She was replaced by Adriatik Llalla, who promised to reopen dormant cases and pursue large-scale imprisonment of offenders, with a corresponding rise in public perceptions of rule of law, from .44 in 2012 to .57 in 2013. The only change in Prosecutor General that was not accompanied by a change in political perception was the controversial 2017 appointment of Arta Marku as Interim Prosecutor General. The RLI score, which had fallen from .55 in 2016 to .51 in 2017, remained steady at .51 in 2018 after Marku's December 2017 appointment. It is possible that the public perception of rule of law and corruption did not improve because Marku's appointment was pushed through the SP-controlled parliament, over opposition objections that the appointment was unconstitutional; the High Prosecutorial Council, defined under the 2016 Justice Reform as the body responsible for electing the new General Prosecutor, had not yet been established, and Marku was seen as a political appointment in an abuse of power by the SP government.

The ongoing travails of an often de-railed justice reform further impact public perception of rule of law and corruption. Ironically, public perception declined after parliament approved the July 2016 reform package. Reforms included structural changes intended to give the judiciary greater independence and the establishment of units to investigate grand corruption and abuse of office: the Special Anti-Corruption Prosecution Office (SPAK) and the National

Bureau of Investigation (NBI). This could be explained by a mis-match between expectations and reality, where the public hoped for more than the justice reform process could deliver. Adding to public distrust, the council responsible for vetting judges has been harshly criticized: those appointed to the council were exempted from justifying their wealth—that is, the vetters were not vetted—and they are perceived as politically aligned with the SP majority.

While the highest scores for rule of law were recorded under DP governments (0.57 in 2008 and 2013), the rule of law perception declined from 0.57 in 2013 to 0.51 in 2019, breaking the pattern of improved public perception of rule of law with a change in government (the SP rotated back into power in 2014, after the 2013 general elections). This change in pattern and the steady decline from 2013–2019 must also be seen in relation to difficulties with justice reform and enduring problems with patronage, favouritism, and nepotism in both central and local governments and within the major political parties.

Effective democracy in Albania

In theory, EDI varies from 100 points (a score which indicates a fully functioning effective democracy, where the citizen is at the centre of the political, social and economic system), to 0 points (which represents an autocratic system with no regard for citizens and a non-existent effective democracy). By calculating DRI and RLI, we can now measure the Albanian Effective Democracy Index for the last 30 years.

Figure 14. Albania Effective Democracy Index.

Year	DRI	RLI	EDI
1991	50	nm	nm
1992	58.33	nm	nm
1993	66.66	nm	nm
1994	58.33	nm	nm
1995	58.33	nm	nm
1996	50	0.41	20.5
1997	50	nm	nm
1998	41.66	0.47	19.58
1999	41.66	nm	nm
2000	41.66	0.51	21.24

2000	41.66	0.51	21.24
2001	58.33	nm	nm
2002	66.66	0.47	31.33
2003	66.66	0.43	28.66
2004	66.66	0.48	31.99
2005	66.66	0.51	33.99
2006	66.66	0.46	30.66
2007	66.66	0.41	27.33
2008	66.66	0.57	37.99
2009	66.66	0.54	35.99
2010	66.66	0.56	37.32
2011	66.66	0.51	33.99
2012	66.66	0.44	29.33
2013	66.66	0.57	37.99
2014	66.66	0.54	36
2015	66.66	0.54	36
2016	66.66	0.55	36.66
2017	66.66	0.51	34
2018	66.66	0.51	34
2019	50	nm	nm

DRI and RLI calculated for the last 30 years, in accordance with the method provided by Alexander, Inglehart and Welzel, to show Albania's Effective Democracy Index 1991–2019. Table prepared by author.

The concept of effective democracy and the effective democracy index provided by Alexander, Inglehart and Welzel helps achieve a clear picture of how democracy actually functions within a country and how the country is progressing on its journey towards democracy. As the above data indicate, the score for effective democracy in Albania during the last 30 years ranges from 20.05 to 37.99, with an average score of 35. This indicates a non-efficient democratic system that minimally recognizes the rights of and fulfils obligations towards citizens—in other words, a pseudo-democracy, or, as Freedom House refers to it, a hybrid regime, a transitional democracy. Indeed, in the 30 years of transition, Albania has never managed to reach even the half-way mark for effective democracy. Rather, we have lived in a *de jure* democracy, dreaming of but never experiencing the rights and freedoms accorded to citizens at the centre of a fully democratic system. It is precisely this fully functioning, effective democracy for which those of us called to serve must re-dedicate ourselves; we, the next generation, have the responsibility of clearing

the road to democracy that those who came out of the regime have been unable to clear.

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Chapter 6

How Can Albania Speed Up the EU Integration Process? The Role of Reforms in the Formalisation of the Extralegal Economy as an Instrument for Socioeconomic Growth and for Establishing the Rule of Law

Besnik Aliaj
Artan Kacani

Abstract

Since 1945, Albania has moved from an almost feudal system, towards a heavily centralized economy, and then, in 1991, transformed 'overnight' into an extreme liberal market economy. After decades of brutal repression, the post-communist vacuum of legislation, policies, and institutions has suspended a people desperate for democracy in the vortex of illiberalism. After 100 percent expropriation and an utterly failed privatization process, Albania has been trying to establish the rule of law without a Cadastral Office, in a climate of increasing informality, characterised by problematic tenure recognition, illegal development, forced evictions, and rampant corruption. As a consequence, the general problems of development throughout the region are exacerbated in Albania by development problems inherited from the regime, compounded by a chaotic, stratified frenzy of unregulated development. These matters have all been

made worse by the failure of several 'political experiments' which have contributed to making the extralegal economy the dominant reality in Albania, comprising more than half of the real estate and properties in the country. Although this does not seem to be a typical issue for EU countries, it remains the main technical and political struggle for Albania if it aims to join the EU.

* * *

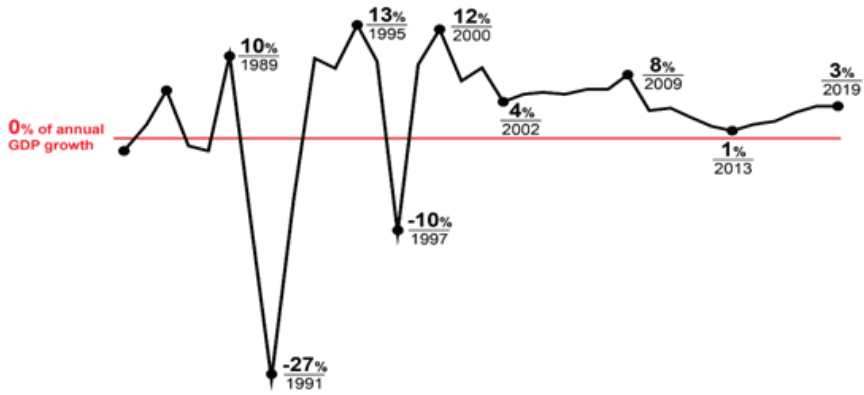
1. Introduction to Albania

Albania operated under the most orthodox system of centralised planning in the former Eastern Bloc. For 45 years, Albanian citizens suffered the denial of the freedoms of speech, religion, and movement.[1] Compared to present-day examples, the Albania of the mid-20th century would be similar to countries such as North Korea. The country was extremely isolated from the rest of world. Citizens were excluded from decision-making processes, which were highly centralised and structured under the country's non-representative democratic system. While excluded from decision-making, the citizens served as compulsory labour to build the country over which they had no say. (This virtual slave labour was euphemistically called 'voluntary', but the harsh legal punishments for refusing to 'volunteer' belie the euphemism.) Hence, when 'transition' arrived in the early 1990s, Albania had no tradition of participatory governance, and, because the past system had heavily abused the concept of 'collectivity' and exploited 'voluntary work', citizens could only view 'participatory governance' as an extenuation of the forced labour that had been a pillar of their oppression.

As with the rest of Eastern Europe, the radical changes of the early 1990s completely transformed Albania's political, social and economic realities. But Albania's particular circumstances have made for a volatile transition punctuated with chaotic and dramatic events, most notably the unprecedented economic collapse from the infamous pyramid schemes[2] and the subsequent social unrest in 1997 that left the country temporarily without a government and required UN intervention and a multi-lateral peace-keeping force to restore order. The 1999 Kosovo War also flooded Albania with refugees, further straining an already fragile social order. The

second decade saw a general increase of stability, progress, and prosperity for the country, with reasonable growth rates at an average of 6 percent per annum (Figure 15). However, in 2010, problems began to resurface as the global recession and the logic underlying financial stability slowed down both the economy and the democratisation process. However, since 2009, Albania has been a member of NATO, and it remains committed to opening negotiations with the EU.

Figure 15. Graph showing the Albanian GDP Growth (annual percent) from 2000 to 2019.



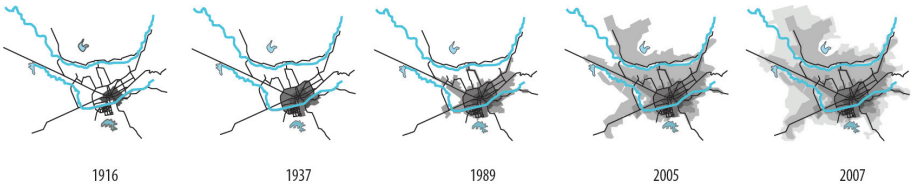
Data from World Bank National Accounts Data https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=AL; and Organisation for Economic Co-operation and Development National Accounts Data Files https://www.oecd.org/development/aid-at-a-glance.htm. Graph prepared by authors.

It was this complex and quickly changing social, economic, and political backdrop that gave birth to the Co-PLAN Institute for Habitat Development, one of the first and most reputable civic initiatives in the country specialised in participatory good governance. Co-PLAN began as a modest, Dutch-financed developmental program in the informally developed neighbourhoods of the country's capital, Tirana. From its beginning in 1993 with a focus on participatory planning, Co-PLAN initiated on-the-ground activities during the difficult years of 1995–1999. It soon distinguished itself as a pioneering organisation committed to contributing towards the difficult transformation of Albania via bottom-up reformation ideas. The instruments of participation for

good governance were considered pivotal consensual tools for societal change.

There were two particularly distinguished benchmarks of Co-PLAN's creative vision and energy. The first was the drafting of the 2003–2007 package of proposals for reforming territorial planning, including the formalisation of 'dead capital' (land, building properties, and businesses), and the strengthening of the rule of law in Albania. This was submitted to the Parliament of Albania but was adapted and implemented only partially (summarised below). The second was the establishment of an alternative academic and research platform: POLIS University in Tirana. POLIS was conceptualised as a national educational and institutional platform that would influence public administration mentalities by preparing a critical mass of expertise that could ensure long-term implementation of reforms in participatory good governance.[3]

Figure 16. Map of Urban Sprawl in Tirana from 1916–2007 and Population Explosion in the First Decade of 2000.



Data from Aliaj, Misteri i Gjashte. Cili është kurthi që mban peng zhvillimin dhe integrimin e ekonomise Shqipëtare në botën moderne, 2008; Janku, 2020.

1.1. Introduction of the Phenomenon of the 'Extralegal Economy' in Albania

Since the end of the communist regime 30 years ago, despite its unpredictable political rivalry, Albania has taken major steps forward on the socioeconomic journey from formerly desperately poor and struggling state to aspiring free-market democracy. Along with its Balkan neighbours accompanying Albania on this journey, many reasonable political leaders and the hard work and entrepreneurial talent of ordinary people have managed to boost these nations towards achieving political consensus, which has pushed

their 'middle-income' status in the direction of economic stability and growth. Nevertheless, Albanians and their political leaders today know very well that their progress is still insufficient for gaining entry into the EU and, in particular, achieving integration. A tough and cunning enemy remains in the way of their economic advancement and the hopes of the population at large: corruption. Corruption impedes the majority of Albanians from applying their energy and creativity to operating productive economic units in the world's formal global markets.

For the reasons listed above, since the early 2000s, the consecutive governments of Albania have initiated a long list of actions and reform initiatives targeting two fronts: the real estate (land and buildings) front and the business front. Such continuous 'reforms' were designed in favour of the transition to the rule of law and an inclusive market economy in Albania, but they often deviated along the way because of high levels of corruption and divided political interests and priorities (such as relations between the majority and the opposition, and the highly adversarial political climate). Indeed, at the beginning, planned reforms usually aimed to establish the foundations for a modern and fair market economy. To achieve this, they focused on training and building capacities for quick (one-stop) public institution practices to legally empower Albanians by:

- Growing the potential of the country—Bringing to light the considerable number of assets (land and properties) hidden or locked in the local market economy;
- Gaining a deeper knowledge of the obstacles—Aiming to consolidate and modernise the country's property system (land and buildings) and to undertake projects and do business competitively; and
- Extracting policy recommendations and actions—Using periodical and comprehensive diagnosis as an instrument aimed at designing institutional reforms that would allow the economy to grow faster and continuously under fair and logical conditions.

When Albanian authorities decided to undertake such initiatives (usually at the beginning of their governing mandate), they generally identified three clear elements that stood out as areas for improvement:

a) Something was always missing in the broad strategy to help Albania take its place in Europe;
b) There was insufficient determination to take the necessary actions to make government reforms work and have long-lasting effects on the lives of all Albanians;
c) To successfully complete the design of effective reform initiatives, a closer look was desperately needed at how the majority of Albanians actually live, work, and make transactions in the nation's dynamic economy.

2. Size and Potential of the Extralegal Economy

This part of the article describes the experience gained through the fieldwork of the Co-PLAN Institute. The work began in 2006 in collaboration with the Institute for Liberty and Democracy-Peru, UNDP Albania, and the Albanian government. This collaboration concluded in 2009, but the work has continued independently since then through monitoring and diagnosis. A diagnosis is crucial as a baseline for (re-)drafting and executing a complete national strategy after gaining a thorough understanding of how—or whether—the Albanian economy and its institutional framework function. The diagnosis was carried out alongside and as an assessment of the impacts of ongoing reforms. This accumulated knowledge sometimes helped Albanian authorities optimise the government's policy design, though this process was heavily politicised and often purposefully inhibited.

An easy conclusion to make is that the national reform undertaken on property and business formalisation initiatives has been necessary and has been strategically aimed in the direction of the EU integration process. The goal is to transfer Albania from the list of poorly performing or developing/transitional countries (usually under the surveillance of UN/IMF/World Bank groups) to the list of transforming societies and developed countries (receiving the assistance of and being monitored by EU institutions). However, the reforms are still not sufficient for unleashing the country's full economic potential. The explanation proposed in this article is that, although the Albanian authorities consider 'formalisation',

in a broad sense, to be a first-class ticket towards economic and social success, the facts on the ground show that this relationship is far more complicated and often politicised.

The experience of other countries shows that formalisation could end up simply being a very expensive experiment in reforms—if, for example, it is limited merely to the legal registration of a business or to simply inscribing a property in the official registry. Instead, to maximise its effects and to assure its sustainability, formalisation must have broader goals than just raising tax revenues or issuing building permits. With a massive percentage of businesses and properties outside the law,[4] formalisation must be part of a broad strategy for empowering Albanians by giving them a platform to create value and interact efficiently with broader markets beyond Albania.

Fieldwork from the Co-PLAN Institute (Aliaj, 2008) and POLIS University research (Kacani, 2019) has shown that the majority of Albanians are ready for reform.[5] Indeed, the people's creative endeavours, despite obstacles, demonstrate that they are eager for opportunities to conduct business and take full advantage of properties, and that they can help to chart the path towards reform. However, when the state fails to recognize people's needs and support their interests, this can drive them to leave the country (emigrate) in search of other opportunities elsewhere rather remain and search for local opportunities to prosper.[6] There is plenty of evidence of this in 1991-1992, 1997–1998, and after 2015. These dates coincide with instances of institutional governance failure in Albania. Albanians' two primary methods for combatting this problem and turning it to their advantage are so-called 'extralegal practices' and emigrating abroad.

Figure 17. Dead Capital Typologies.

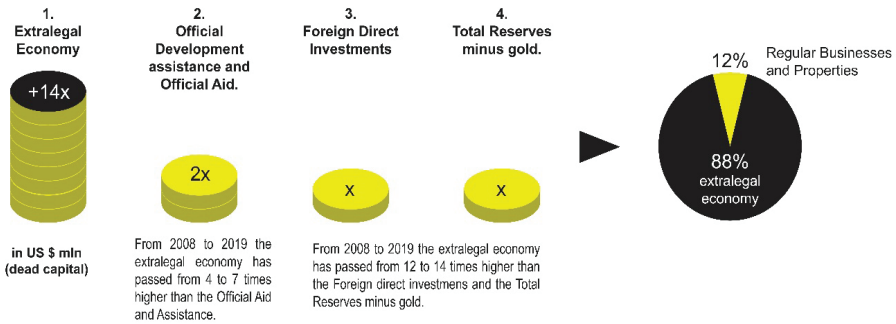
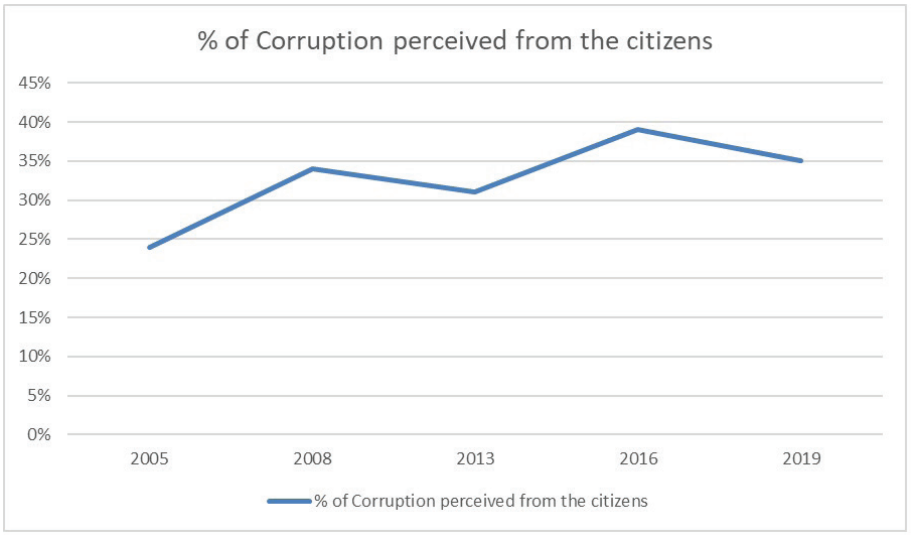


Figure licence: CC BY-ND. Data sources: Aliaj, Misteri i Gjashte. Cili është kurthi që mban peng zhvillimin dhe integrimin e ekonomise Shqipëtare në botën modern, 2008; World Bank 2019; Albanian National Bank 2019; CEIC data 2023; Bank of Albania 2023; Albanian Institute of Statistics (INSTAT); General Directorate of State Material Reserves (DPRMSH). For full citations, see references. Graph prepared by the authors.

However, no matter how creative individual solutions might be, such extralegal practices, when seen from the perspective of developing the nation, are full of shortcomings and doomed to failure. This is because institutions in Albania, crucial to building a modern and inclusive market economy, are often designed incoherently or for convenience. To correct this problem, institutions must incorporate the legal instruments that already exist in modern economies, must be structured with a global vision, and must reflect the practices of developed EU nations. Instantiating these practices will help Albanian authorities adopt a global vision that could help the government start making the necessary adjustments to its institutional framework for the benefit of the majority of Albanians. This institutional focus is crucial as it shows that we must dismiss the idea that widespread corruption and continued informality are the effects of alleged defects in Albanian culture. This is simply not the case: Albanians are no less capable than their counterparts in neighbouring countries. The real enemy of Albanians is within the nation's existing legal framework, which is full of regulatory bottlenecks, unpredictable norms, and badly designed laws that force citizens and enterprises to operate in the extralegal marketplace. Albanians have no alternatives to low productivity and scarce accumulation of capital, and no possibility for business growth. This is the ideal environment

for breeding public and private corruption.[8] Albania needs less arbitrary power and favouritism among its public officials and more transparency in its rules and procedures. Public requirements must be listed and followed; fees must be indisputable and thus incorruptible; and, above all, ordinary people must know the rules.

Figure 18. Graph on the Level of Corruption in Albania by International Partners, Country Parties.



Data from Transparency International 2019; Corruption Perceptions Index commissioned by the University of Passau's Johann Graf Lambsdorff. The 2012 CPI takes into account 16 different surveys and assessments from 12 different institutions. Graph prepared by the authors.

3. Albanians Live in Extralegality

Although Albania has developed a new European-style legal system aimed to evolve a functional market economy, its laws and regulations remain costly, complex, unnecessarily intrusive, and are often unrealizable for most Albanians. The failure of the current legal order to keep pace with Albania's socioeconomic growth has forced most Albanians to invent parallel extralegal laws:[8] they have developed a whole set of informal arrangements that mirror the legal institutions that are beyond their grasp. Below are some examples of extralegal practices that happen in both real estate and business operations and in the parallel economy throughout Albania.

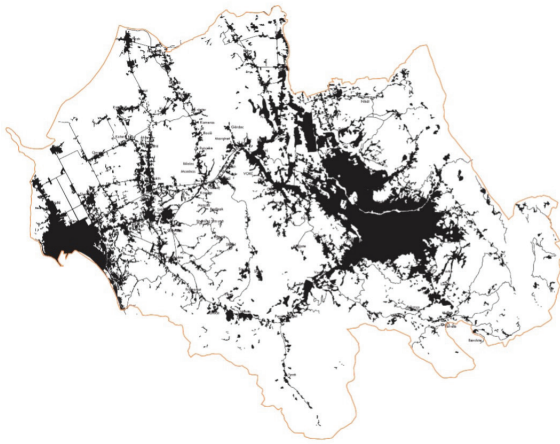
3.1. Extralegal Practices in Handling Real Estate Property: Extralegal Occupation

When Albanians gained the right to move freely around their own country in 1991, large masses headed towards the main cities and squatted on agricultural lands surrounding urban areas. Some of these newcomers informally bought land from previous settlers, but most of them built their new houses wherever they could. The large settlements of Kamza and Këneta in the peripheries of Tirana and Durrës, for example, are now city districts with some 130 thousand inhabitants each. Though these new settlers live outside the legal system, they do not live in chaos; instead, they have established their own extralegal arrangements. The developments on the outskirts of the city of Vlorë even appear to have a kind of local zoning ordinance. Most of the inhabitants, however, lack adequate (legal) security over the land they have settled. For example, some of that land remains in legal dispute with pre-communist owners, and, as per the forced evictions in Astir, many who applied for legal documents based on legislation for amount of time inhabiting a dwelling were refused. Therefore, they are unable to fully exploit the economic potential of their dwellings.

Figure 19. Informal Urban Expansion in Këneta, on the Outskirts of the City of Durrës.

Photo credit: Studio Domi Print.

Figure 20. Urban Sprawl in the Regions of Tirana and Durrës.



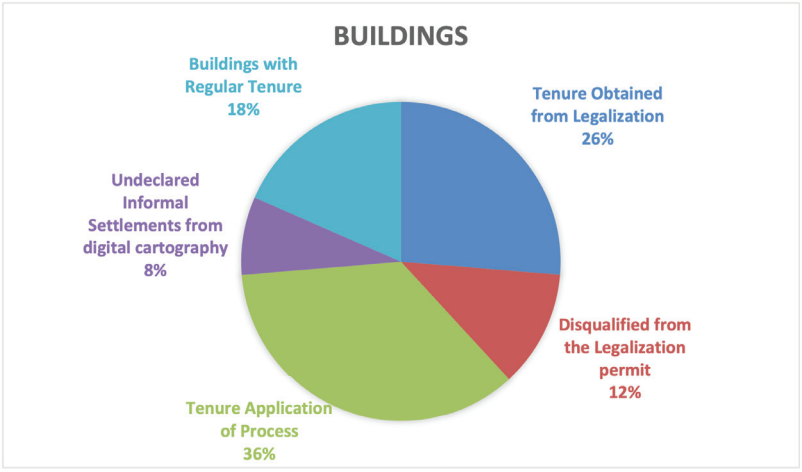
Map prepared by Dr. Artan Kacani. Figure licence CC BY-ND.

3.1.1. Extralegal Constructions

Seeking more comfortable and bigger dwelling units (a cultural 'dream' strengthened by the suffering they experienced during communism), Albanians have constructed new buildings and extended existing ones. However, given the lack of a proper legal platform to handle real estate property, most of them have done so either by going against zoning and construction regulations or without the corresponding permits.[9] According to the last report by the Agency for Legalisation, Urbanisation and Integration of Informal Areas and Buildings (ALUIZNI),[10] the Albanian institution responsible for formalising informal properties (land and buildings), there have already been 320 thousand registered applications in the last 15 years. However, this number does not reflect the real number of informal constructions, and only 30 percent of them have obtained land or housing tenure over these 15 years. Another 30 percent of informal dwellings are ineligible for land or building tenure because of their proximity to restricted areas or inadequate building standards. Assuming there are three inhabitants per dwelling, the total number of inhabitants affected by informal settlements could be estimated to be approximately 1 million people, out of a total population of 3.6 million people—half of whom are

concentrated in the Tirana and Durrës regions, with smaller percentages in Shkodër, Elbasan, Vlorë, and so on.

Figure 21. Percentage of Informal Built Settlements in Albania.


BUILDINGS
Buildings with Regular Tenure 18%
Tenure Obtained from Legalization 26%
Undeclared Informal Settlements from digital cartography 8%
Disqualified from the Legalization permit 12%
Tenure Application of Process 36%

Data from INSTAT Albania 2011; ALUIZNI Agency 2016. Graph prepared by authors.

3.1.2. Extralegal Transactions

Because most properties are not adequately registered, the only way to transfer them to third parties is outside the public registry. Because of the high cost of the public registry, properties that were once completely formal often revert to extralegality during subsequent transactions. Most of the extralegal transactions for the settlement tenure occur in the transition phase of obtaining a regular tenure. The processes of achieving legalisation by obtaining legal tenure for a settlement seem long and complicated for some inhabitants. For others, like the 12 percent indicated in Figure 21, it is impossible. For a better understanding of regular housing tenure, one should remember that the housing solutions for land tenure and building tenure have a highly uncertain result. In some cases, the inhabitants obtain neither tenure, and in others, they have only partial rights to the building. The list below, Figure 22, illustrates the diversity and complexity of the unsolved ownership issues in Albania. It indicates cases in which the complex legal environment and ongoing communist legacies can create obstacles[11] for obtaining housing tenure and for formalising land and building ownership.

Figure 22. Demystification of the Typologies of the Informal Settlements on Services and Transactions Network.

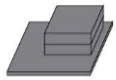
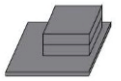
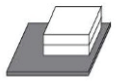
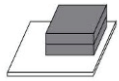
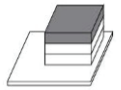
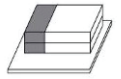
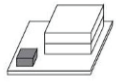
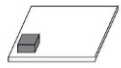
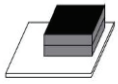
		Ownerships	In Program Yes/No	Judge Court	Private Service	Public Service	Bank
	Violating the Land Use	Single householder	No	No	No	No	No
		Multi householders	Yes Since 2014.	No	Yes	Yes	Yes
	Un-affordable or Inaccessible Tenure	Single householder	Yes	Yes/No	Yes	Yes	Yes
		Multi householders	No	No	No	No	No
	No Land Tenure	Single householder	No	Yes	Yes	Yes	No
		Multi householders	No	Yes	Yes	Yes	No
	Partial Land Tenure	Single householder	No	Yes/No	Yes/No	Yes/No	Yes/No
		Multi householders	No	No	No	No	No
	Developed Partial Land Tenure	Single householder	Yes	Yes/No	Yes	Yes	Yes/No
		Multi householders	No	Yes	No	No	No
	Vertical Settlement Densification	Single householder	Yes	No	Yes	Yes	Yes
		Multi householders	Yes	Yes	Yes	Yes	Yes
	Vertical Settlement Densification	Single householder	Yes	Yes	Yes	Yes	Yes
		Multi householders	Yes	Yes	Yes	Yes	Yes
	Side Settlement Densification	Single householder	Yes	No	No	Yes	Yes/No
		Multi householders	No	No	No	No	No
	Facility Settlement Densification	Single householder	Yes	Yes	Yes	Yes	Yes
		Multi householders	No	No	No	No	No
	Shacks	Single householder	No	No	No	No	No
		Multi householders	No	No	No	No	No
	Unconcluded and abandoned settlement.	Single householder	Yes/No	No	Yes	Yes/No	Yes
		Multi householders	No	No	No	No	No

Figure license: CC BY-ND. Figure prepared by authors.

3.1.3. Examples of the Diversity and Complexity of Unsolved Issues of Ownership in Albania in Cases where Housing Tenure Creates Obstacles for Formalising Land and Building Ownership.

Violation of land use regulations:

This covers all settlements that have been built informally on land and that violate regulatory guidelines or land use regulations, or that will be displaced by future projects of public interest. Residents in this case face total insecurity in housing tenure, particularly those who have built in areas that the 2018 Council of Ministers list defined as 'informal settlements' that would never achieve legalisation. These vulnerable areas are predominantly inhabited by single or a limited number of householders. However, in some cases in which settlements developed by multi-householders have significantly changed the topography, there is some latitude for the General Territorial Regulatory Plan, which updates land use regulations once every 15 to 20 years, to evolve to reflect the ways that land is actually being used. While settlements in violation of land use regulation are not legal in nature as long the Regulatory Plan remains unchanged, those settlements that have created identities that the Regulatory Plan later recognizes have a higher possibility of obtaining tenure.

Unaffordable housing tenure:

This covers all settlements in which the householders cannot afford the costs of the tenure fee. These are mostly cases in which inhabitants live abroad or do not have a form of income, and usually neglect the formalisation process. Unfortunately, Albania is not a part of the International Covenant on Economic, Social and Cultural Rights (ICESCR),[12] and this means that the inhabitants do not gain full social protection in case of vulnerability. Currently, there are no programs or policies for this kind of tenure informality. Even though currently untenured, this category of settlement may be bought, sold, and developed in the legal market with the involvement of banks or through other public policies.

Settlements without land tenure:

Many are the cases where there's a land conflict, an unregistered cadastral map, or when the owners own only the building but not the land. This is a common phenomenon with cases inherited from the communist regime, where early privatisation laws assigned apartments and flats to families following a strict housing system accommodation prioritizing the workforce in the cities. Transactions concerning building ownership and rights in these cases are conducted via hired private and public services.

Partial land tenure without developed constructions:

Many of these cases involve single inhabitants who occupy informal residual public spaces. For this category, the formalisation of land is possible. This typology also applies to occupied public land along the coast. Informal transactions between inhabitants take place, creating new property conflicts and 'freezing' any further development. Other cases in this category are informal activities like 'car parking' or 'gas stations'.

Partially developed land tenure:

This category covers families still living in infrastructure from the communist regime, frequently adapted for contemporary multi-family housing needs. Examples are people living in abandoned buildings from defunct industries like *Uzina e Traktoreve* in Shkoza, Tiranë. There is no way to achieve formalisation for this housing category, and no transactions can take place.

Buildings developed vertically by inhabitants due to densification (*'shtesa kati'* in Albanian):

This refers to settlements and lands that previously obtained tenure but that undergo the application process again for a new floor. Formalisation for this category is possible.

Side settlement densification (*'shtese anësore'* in Albanian):

This category is different for single and multi-householders. The typical example of this is the side

extensions built on Soviet blocks during the communist regime. This category, for multi-householders, has generated conflict among inhabitants—between those who have the money to invest in such an extension and those who do not, or simply do not want to. Most of the buildings in this category were badly hit by the earthquakes of 2020 in Albania. Because of that, the transactions and conflicts have become more complicated.

Facility settlement due to land densification:

For economic purposes, parts of a building might have different tenure fees. They are significantly higher if the facility is for housing or economic use, and lower if it used as a garage or for other purposes. The change of use from economic to housing and vice versa is sometimes unmonitored by public institutions, which pushes people towards informality.

Shacks, barracks, and improvised structures:

These are usually built in rural areas, in isolated or particularly poor areas, in the middle of agricultural lands, or in the middle of urban/abandoned/risk areas, such as those where members of the Roma community live. During the last 4 years, with the transformations that have taken place in major cities, such social groups have often lost their housing rights entirely.[13] Unfortunately, there are as of yet no public policies that focus on the condition of these settlements. They are practically forcibly excluded from the land tenure and integration policies.

Unfinished and abandoned buildings:

Buildings in this category can achieve formalisation if the householder legally clarifies the final destination of use of the investment.

3.2. Extralegal Mechanisms of Business Formation and Operation

3.2.1. Extralegal Organisations

Most Albanian entrepreneurs associate with family members and close friends through informal association agreements. They incorporate them as physical persons, and this results in their business partners being left in the dark, regardless of how much capital they may have contributed or how productive they may be. However, this avoids the administrative burdens and red tape typically associated with bigger business firms. Despite the economic benefits of this avoidance, this practice imposes several limitations and risks, mainly because of the lack of enforcement of these contracts and the impossibility of gaining access to such legal benefits as limited liability, asset partitioning, or free transmission of shares.

3.2.2. Networking in Business

It is common to hear Albanians say that they only do business individually to prevent partners from defaulting. However, they do, in fact, do business, but always in informal ways, such as through 'gentleman's agreements' or other rules based on personal trust. Such forms of association are common in areas like the Medreseja market of Tirana, where thousands of entrepreneurs are clustered together daily sharing transport, cleaning, and security costs, and bargaining collectively with the landowner about leasing conditions.

3.2.3. Extralegal Identity

For a long time, Albanians did not have access to a proper and unified identity system, though this has been taken care of in the last decade. However, experience shows that, even without a unified identity system, people found creative solutions. For example, many Albanians commonly resorted to verification by the kryeplak (alderman), a local authority. This identity guarantee, based on customary law and personal integrity, served as proof of their personal identity and increased the security of their transactions. Despite their obvious value, these identity mechanisms have been limited, imperfect, and unrecognised by authorities outside the zones where they have been issued.

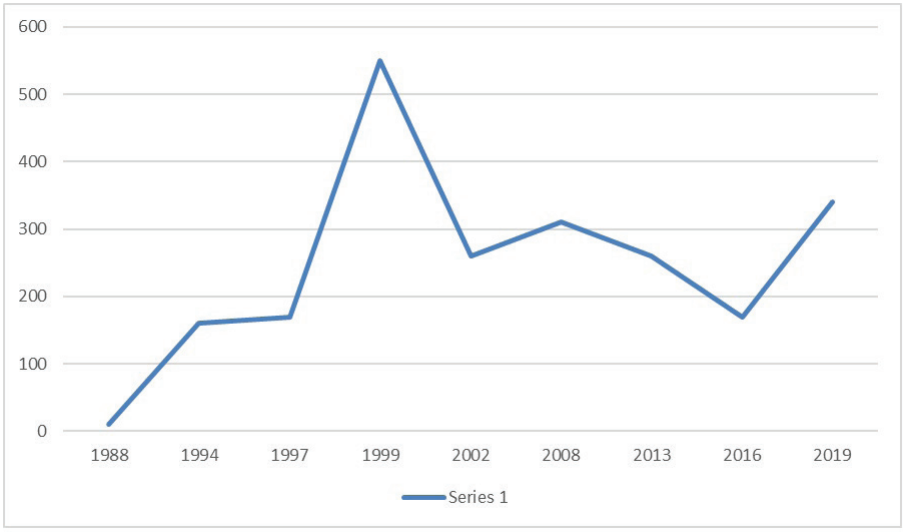
3.2.4. Credit

Formal credit is not easy to obtain or available for the majority of Albanian entrepreneurs, thereby reducing their possibilities for expanding their activities. Through extralegal practices, Albanians avoided this problem. A particularly noteworthy practice is the provision of credit by informal moneychangers. Not only does the practice of informal cash-on-demand credit exist, but it also constitutes an important source of credit for Albanian entrepreneurs. Informal credit, however, is questioned for its shortcomings, such as interest rates that are much higher than in the formal system; loans that are not suitable for long-term operations; and, in some cases, the use of violence as a mechanism of enforcing repayment.

3.2.5. The Nature of Extralegal Transactions in Albania: The 'Hit and Run Economy'

One of the main features of Albanian extralegality is the type of transaction carried out by extralegal economic agents. In the Albanian extralegal world, the volume of monetary transactions is high, but these extralegal transactions come with fewer benefits to people and prevent them from establishing long-term relationships with reliable agents. Data show[14] that the most frequent international transactions in Albania are done via money-transfer companies rather than banks. Unlike in the legal world, these transactions are mostly completed in cash, performed manually, and are 'one-shot' interactions of a short duration. Contracts are therefore reduced to conditions like 'take it or leave it' and logic like 'now or never'. This kind of short-sighted behaviour can cause agents to act against their own long-term interests. Cheating and deceiving customers or simply not complying with the terms of a contractual arrangement are two common examples. Such failures in the institutional setting lead to the deterioration of social values, breeding corruption and crime, encouraging mafias, and so on. Such behaviour leads to an economy that can hardly meet the needs of the local market, much less compete in the global market.

Figure 23. Net Official Development Assistance and Official Aid Received, Albania (current US dollars).



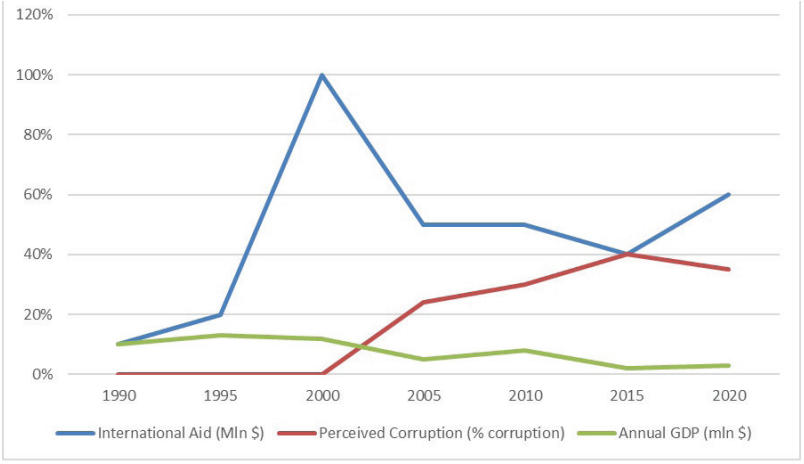
Data from The World Bank 2019, https://data.worldbank.org/indicator/DT.ODA.ODAT.CD?locations=AL. Graph prepared by authors.

3.2.6. Where Does the Extralegal Market Go?

The graph below (Figure 24), indicates how international aid played a fundamental role in helping Albania pull through the crisis of the transition during the early 1990s. A particularly important consequence of this aid is that its distribution throughout various levels of the economy increased the annual GDP by approximately 6 percent. However, after a decade of general decline in international development funds, aid again sharply increased in 2016, mainly from European countries, and has steadily increased over the last five years. While international aid has increased with the same dynamism as in the early 1990s, the annual percentage of GDP has not increased. Where does this funding go? If not towards the single housing solutions, to which sector are the funds directed and why does the annual GDP not increase? Certainly, the nature of international aid has changed in the last 30 years in Albania, ranging from grants and donations to credits and loans. But that is not sufficient to explain the radical break in the pre-2016 pattern of GDP growth following international aid trends, where rises in aid are in general matched by increased GDP. This forces us to ask if the relative stagnation of GDP

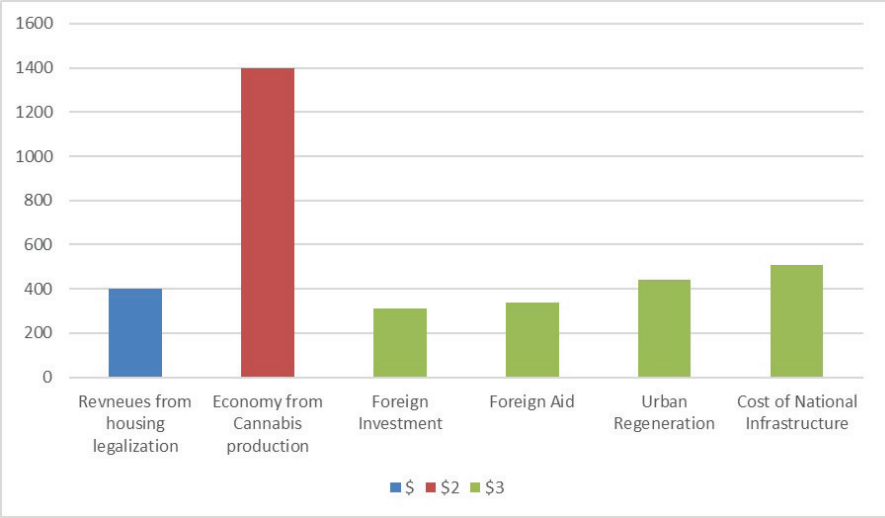
vis-á-vis international aid is related to the growth of corruption and cannabis cultivation, estimated by various international partners to be worth around 1.4 billion Euros.[15] As shown in Figure 25 below, the scale of illegal dollars from the cannabis economy in 2018 is nearly equivalent to the total combined dollars in foreign aid plus foreign investments, added to the dollars invested in national infrastructure and urban renewal. Arguably, both remittances and the cannabis economy are 'extralegal' (non-taxable, outside of the formal economy), but these different forms of extralegality effect the GDP very differently. Remittances, which do not entail criminal activity (trafficking, money laundering, etc.) have a much broader scope in the extralegal market: used for householder's subsistence and development, this money circulates through the informal economy and enters the formal economy indirectly. This is quite different from the criminal activity driving the cannabis economy, which illegally enriches a few power elites and criminal elements but contributes nothing to the formal economy or the development of the country. This comparison becomes even more urgent when we see that legalizing informal settlements and businesses potentially generates up to 400 million dollars—90 million dollars more than Albania received in foreign investments in 2018 and 60 million more than it received in foreign aid.

Figure 24. The Annual GDP Percent Growth Compared with International Aid and with Perceived Corruption.



Data from The World Bank, 2023; The World Bank, 2019; Transparency International, 2019; Albanian National Bank, 2019; CEIC data, 2023.

Figure 25. Comparing the Possible 'Grey Economy' with Governmental Expenditures in 2018.



Data from INSTAT, the World Bank, the Albanian Ministry of Infrastructure; De Soto, Gordon, Gedeshi, & Sinoimeri, 2002; Pressly, 2016. Graph prepared by the authors.

4. Proposed Legal Alternatives to Overcome Legal and Institutional Barriers

What are the causes of such widespread extralegality in Albania? To answer this question, a study of the institutional and legal framework is needed to: (i) identify the main barriers; (ii) be able to propose preliminary recommendations; and (iii) orient the decisions necessary to overcome barriers. The proposed agenda and recommendations below reflect conclusions from the authors' extensive experience working with the Albanian Authorities, UNDP, and ILD-Peru (of the world-renowned economist Hernando De Soto), and from applying this experience through the pioneering organization Co-PLAN, Institute for Habitat Development in Tirana Albania.[16]

4.1. Property Rights

A property system is a social contract that is put into practice. It is the result of multiple agreements reached by common citizens. Such agreements are formed at certain

times as a result of the functioning of laws and regulations on land and businesses, and different agents carry out the actual practices. Although the Albanian government is addressing certain critical topics, the entities mandated to do so are working without a unified agenda or vision. This obstructs the possibility for reaching the agreements and devising the laws and regulations that can be effectively carried out by designated agents.

The restitution and compensation process must define a legal framework that will finally end the current open-ended process of recognition of rights by: (i) establishing a definitive deadline for receiving compensation claims; (ii) setting a closed criterion to calculate the total expected compensation; (iii) limiting the area to be compensated and the percentage of the value to be paid; and (iv) streamlining the procedures.

The legalisation process for real estate should also: (i) set its own priorities with a timeline and a business plan based on hard evidence about the characteristics and typologies of the extralegal sector; and (ii) collect and systematise additional information, such as who owns the land where the buildings have been built, where the process of first registration was finalised, existing claims for compensation or restitution, and the value of the actual land to determine compensation. The respective business plans should combine specific actions designed to address areas in which quick wins can be achieved so as to legitimise the process. Simultaneously, however, pilot activities should be carried out in areas in which the typology (or a combination of typologies) presents more difficulties. The base of information can thus be expanded, and the government can prepare responses for dealing with more complex areas. To avoid more illegal settlements, priority should be given to designing alternative housing solutions for low-income families. Otherwise, formalisation will encourage more illegal settlements.

Registration of property imposes high costs on users. Tax controls for registration, notary, and other specialised services, and fines for not registering are insuperable barriers for owners. Ease of registration is also hindered by redundant requirements that place unnecessary burdens on users. Registered information can only be accessed by the owners or by authorised agents, undermining the registry's transparency and its role as an information provider.

Several land administration and management programmes have addressed most of these obstacles and are already completing first registration, digitalising records, updating and upgrading information, and improving the provision of services. However, these steps are fragile and positive gains are offset in many ways, including high costs of transactions and only partially or incorrectly registered buildings, in particular those with combined living and working areas. People need consistent support to maintain land tenure throughout the life of a dwelling as they make investments and improvements. Currently, it is too costly for them to record transactions after first registration (e.g. high registration costs, land registry structures prone to corruption). Thus, many once-formalised assets become extralegal again. We need to improve and regulate these systems and structures, both to allow people to maintain consistent land tenure and, for those whose once-formalised assets have lost legal status, to incentivize them to bring assets back into legal status.

There are no planning instruments governing development in rural and urban growth areas. Thus, regulations aimed at channelling development are mainly introduced on a case-by-case basis. Administrative procedures for urban development, however, are extremely bureaucratic and centralised. The policy and strategy for the implementation of a spatial planning in Albania has set the basis for drafting the law on spatial planning and development control. The law has been prepared and reformulated several times over the last decade—an initiative that all should consensually stabilise and support.

An analysis of the rules for private dealings with property shows that the most important institutional barrier in Albania for real estate dealings, such as selling, renting, and inheriting land, is the uncertainty of the institutional framework. Addressing the above-mentioned problems will have a positive effect on the institutional framework for private dealings with property. Another pending issue is the lack of legal mechanisms to regulate relations that arise from co-ownership and horizontal property. The institution of the so-called 'agricultural family' (mandatory co-ownership of land by beneficiaries of the agrarian land reform of 1991)

imposes a series of shortcomings and should ultimately be eliminated from the legal framework.

4.2. Business Organisation Forms

The legal and institutional framework for businesses should allow Albanian entrepreneurs to get the most out of their business initiatives. This is because success should be a matter of talent and effort, rather than luck or privileged access to power. Albanian authorities have already made significant efforts to reduce the costs of formalising businesses with the introduction of a one-stop-shop registration system. Nevertheless, there are some other important measures that should be taken to consolidate the position of the state as the business partner that Albanian entrepreneurs need by increasing the benefits of carrying out business formally.

The business organisation form most commonly chosen by Albanian entrepreneurs when starting a business is the so-called 'physical person'. However, this form does not provide the basic legal tools for separating the company's capital from the individuals, and neither does it limit the liability of the partners over business debts. Because the business assets are not represented in shares, the owners are not permitted to take on any partners. Reducing access costs to more complex business forms, such as the 'limited liability partnership' and the 'joint stock company', would be the most efficient way to quickly allow Albanians to enjoy such benefits. Although the National Registration Centre (NRC) has been addressing access costs for a decade, reducing the time and cost of incorporating companies, the requirement of high initial capital to incorporate should be reduced further so that more Albanians can access complex organisational forms for their own companies. The initiative started by the NRC should be consolidated to make up-to-date registration information of businesses available for public access. To keep information updated, registration should entail benefits for businesses so that they have incentives to voluntarily report any important changes to the business registry.

Once incorporated, to start operating the business, entrepreneurs are required to complete many burdensome procedures to obtain their licenses. There is not enough information available, and the procedures themselves are

unclear, allowing room for arbitrary decisions, which opens the gate to corruption. Many public agencies have implemented duplicate controls by performing one-off inspections and demanding renewals. It is, therefore, necessary to thoroughly reengineer the licensing system. It is also necessary to clearly define the responsibilities of the different agencies involved at all levels of government, eliminating duplication of duties, applying standardised procedures, and increasing the accountability of public officials. Complying with tax and labour regulations is one of the most difficult tasks for entrepreneurs. This is not only because of the rates they have to pay, but also because of the procedures they have to follow, the uncertainty, and the risk of arbitrary inspections. Reducing the differences between 'small' and 'big' taxpayers will also reduce the distortions in the system. Currently, this difference between the taxpayers is the main incentive for cheating the tax authorities, and it increases corruption, which damages the whole system. Moreover, it is necessary to establish simple accounting standards and to simplify and standardise tax and labour inspections in a way that would make them predictable for businesspeople.

4.3. Mechanisms to Perform in Broadening Markets

To grow, Albanian businesses need all the necessary institutional tools to contract clients, suppliers, workers, investors, and the state. These institutional tools must be available and work with certainty and predictability. However, Albanian citizens and businesses inherited a poor identity system in the start-up phase, which limits many of them from introducing themselves to people beyond their network of family and friends and prevents them from operating in the expanded market. This is not only harmful for the economy, but it also questions the validity of the identity document in the democratic vote.

Despite progress in this area, Albania must prepare and consolidate a clear and official identity document and an updated information network to serve as an identity mechanism for both individuals and businesses. This would also better facilitate the mechanisms and standards for the EU integration process. It is essential that all available identity systems be interconnected and consistently exchange

information. This also requires setting standards for the use of technology and platforms for sharing information. This information includes: (i) the information managed by the personal identity system (in progress); (ii) the business registry and the credit registry (being created); (iii) the immovable property registry, and the information regarding addresses (being created). These elements must be available for broad public and private use in accordance with the provisions concerning the right to privacy contained in Albanian legislation.

Furthermore, the compliance and enforcement of contracts in Albania is a major barrier to entrepreneurs eager to broaden their markets. Without accountability and effective sanctions for breaches of contract, incentives to comply are too limited. However, formal court proceedings to guarantee contractual obligations are out of the reach of most Albanians. For this reason, Albanians urgently require a fast and predictable conflict resolution system that utilizes Albanians' natural capacities for creative problem solving and is binding and enforceable but at the same time outside of the formal court system. The possibility of contractually settling out of court, even using private execution mechanisms for the foreclosure of collateral to recover unpaid debts, should be allowed as it is in many other countries. All of this can happen only when judiciary reform is consolidated.

5. Conclusions: Albania and the Rule of Law

The main barriers that prevent Albanians from benefiting from a single rule of law have their roots in the inherited legal framework of the nation. They can be analysed from two perspectives: factors related to the production of legislation and factors related to its implementation. The production of laws and regulations in Albania is characterised by a lack of predictability and transparency, which limits entrepreneurs from making long-term and serious investments with accurate risk–benefit calculations. The excessive complexity of Albanian legislation also generates costs associated with its implementation, compliance, and control. Furthermore, overlapping legislations impose unnecessary costs for businesses and citizens, creating legal uncertainty that hinders efficient transactions. Therefore, the enforcement

of legislation is damaged by excessive discretionary power and arbitrariness, lack of criteria for informing public officials about how to interpret and enforce it, and lack of transparency because of reduced access to key information. This further prevents public officials from being accountable to citizens. Albania lacks skilled civil servants and conducts limited enforcement of administrative and judicial decisions, which further reduces citizens' confidence in the state.

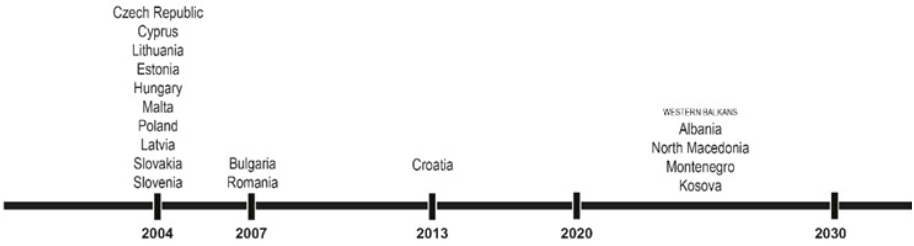
To address these problems, this paper introduces a series of policy recommendations aimed at making existing laws more transparent, rational, accessible, and enforceable. The ultimate goal is to improve public administration in general. The legislative design process must be based on a dual philosophy of recommendations: having a strong 'bottom-up' component and taking advantage of the experience, knowledge, and advice of every person that the new legal system aims to serve. Such a democratic reform must be, at its best, transparent and interactive. Following this logic, people delegate power to lawmakers, who, from the other side, listen to their constituents speak about matters they understand better than any politician, legislator, or administrator. Such wealth of experience comes from the daily trials of, and need for survival when, conducting business. Therefore, constituents are likely to increase the effectiveness of the reforms that the Albanian authorities have initiated.

The recommendations also include: (i) the pre-publication of laws and regulations before their approval; (ii) the undertaking of cost–benefit analyses for legislation to guarantee the value and suitability of legal drafts before they are put to the vote; (iii) the publication of handbooks of administrative procedures for each agency and level of government that deals directly with citizens; and (iv) the creation of a public agency that is responsible for supervising the process of administrative simplification. There is no need to explain the absolute importance of the highest national political leadership being involved in these reforms so as to overcome the multiplicity of barriers that currently exist. The nature of the reforms we discuss seeks to address such problems and consequently confront what will most likely be strong opposition. Only a strong and carefully planned communication strategy that involves all relevant actors will help generate consensus and forge coalitions.

5.1. The Potential of Real Growth

Albania has a wealth of resources that, if used creatively and efficiently, could easily convert the country into Europe's next best destination. The outcomes of such policies could raise the living standards for most Albanians to the level of the European Union's high-income countries. Currently, the amount of wealth that remains in the realm of extralegality reflects the country's biggest potential for growth. For example, solving the institutional problem will have a large impact on perhaps the three most promising economic sectors of the country: the agro-industry, clothing and footwear, and tourism.

Figure 26. Enlargement of the European Union by Countries 2004-2024.



Data from Aliaj, Misteri i Gjashte. Cili është kurthi që mban peng zhvillimin dhe integrimin e ekonomise Shqipëtare në botën moderne, 2008. Graph prepared by the authors.

5.2. The Next Steps

What is promising is that Albanian authorities have not only recognised that the status quo must be changed, they are already trying to move on to the next stage with a set of reforms and a series of changes. These reforms and changes have potential, but the political will is needed to leverage a young and talented generation of Albanian professionals who have studied abroad and are ready to move forward designing critical improvements for existing reform efforts and ensuring their implementation. Now that the country is struggling to obtain quick and tangible results to be able to join the European Union, it is time to take action, something that the government has already proved it can do when it has confronted issues in the past. To maintain the momentum of the reform agenda, the next steps should involve the

development of an institutional setting for reform. This includes the identification of: (i) which government entities will participate or be affected by the reforms; (ii) which coordination mechanisms should be put in place; (iii) which are the relevant laws and regulations to be amended; and (iv) what will be the contributions and responsibilities of each involved entity.

The reform agenda should also include the establishment of a high-level institutional vehicle in charge of coordinating all reform efforts and implementing a consistent, integral strategy of institutional reform. This institutional vehicle must also include: (i) the development of short-term, medium-term, and long-term reform agendas; ii) the amendment of norms and laws; (iii) the design and restructuring of certain public entities; (iv) the coordination of policies and programs; (v) collaboration with public agencies and local governments; and (vi) the engagement of different political actors.

[1] Albania was a one-party state with internal and external migratory borders and prohibitions during the Communist regime.

[2] Between 1996 and 1997, fraudulent financial schemes in Albania swallowed almost 2 billion US$, causing social and political unrest and taking the country to the brink of a civil war. Approximately 3,000 people died, and the rule of law and the economy collapsed. The international community intervened with both aid and military presence, ensuring a de facto process of peace and reconstruction.

[3] Within 10 years of POLIS University's establishment, more than 100 students graduated in urban planning and environmental studies, and more than 60 percent are already employed in public administration in places such as the newly born municipalities created after the decentralisation reform.

[4] As of 2018, approximately 60 percent of the building settlements in Albanian territory do not have legal tenure. Data from the Albanian Agency for Legalisation, Urbanisation and Integration of Informal Areas and Settlements (ALUIZNI), 2018. http://www.aluizni.gov.al/; Albanian Institute of Statistics (INSTAT), 2020. https://www.instat.gov.al.

[5] In 2016, the Albanian parliament voted unanimously for justice reform. *Mejdini, Fatjona*: Albanian MPs Finally Adopt Justice Reform. Balkan Insight, 22 July 2016. https://www.bbc.com/news/magazine-38111945 (last accessed: 29 February, 2024).

[6] According to INSTAT, approximately one million Albanians migrated between

the fall of the communist regime in 1990 and 2018. INSTAT data also shows the overwhelming economic pressure driving emigration; in 2020, approximately 80 percent of the migrants migrated for work purposes. https://www.instat.gov.al/.

[7] Since 1995, Transparency International has published an annual Corruption Perceptions Index (CPI) that ranks countries by their perceived levels of public sector corruption, as determined by expert assessments and opinion surveys. The CPI generally defines 'corruption' as the misuse of public power for private benefit. A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). https://www.transparency.org/en/cpi/2022 (last accessed: 29 February, 2024).

[8] According to De Soto (2003), remittances played a fundamental role in the rise of the practice of building informally. *De Soto, Hermine G. / Gordon, Peter / Gedeshi, Ilir / Sinoimeri, Zamira:* Poverty in Albania: A Qualitative Assessment. World Bank Technical Paper, number 520. Washington, DC: World Bank, 2002. Nowadays, as we will see, other factors play a crucial role in the increasing effect of the extralegal economy on businesses and properties. *Kacani, Artan*: Opening Future Scenarios for the Urbanization, Integration of Informal Settlements in Albania. 1st International Scientific Conference on Professional Sciences. Durres, Albania: UAMD, 2016, p. 12.

[9] Besnik Aliaj states that 'Informal constructions are not simply a legal problem, even if the phenomenon is recognised as having considerable legal implications and taking on different legal forms. The constructions may be illegal for a number of reasons: they are built on public land or property that belongs to someone else; there are problems with marking or registration; there are problems with inheritance, marriage, or property claims or compensation; they disregard urban norms; the construction permits may not have been obtained, which may not comply with de facto implementation regulations; the type of construction does not respect environmental conditions or is built in a protected historical area; or they are located in areas of low durability and pose a danger to the safety of people, such as agricultural land'. See *Aliaj, Besnik:* Misteri i Gjashte: Cili eshte kurthi qe mban peng zhvillimin dhe integrimin e ekonomisë shqiptare ne boten moderne. Tiranë: CoPlan, 2008, p. 216-219.

[10] ALUIZNI is the acronym of the regional Agency for Legalisation, Urbanisation and Integration of Informal Areas and Settlements, created as a part of the process of integrating the extralegal economy into the regular one.

[11] Obstructing factors are the legal, physical, and environmental constraints that persist in the territory and prevent an informal settlement from achieving legalisation in accordance with the clearly defined processes. See *Kacani, Artan:* Defining the Hindering Factors of the Informal Settlements in the General Regulatory Plan of Shkoder Municipality: Projecting Shkodër. In: Operative fragments In-Between Lake, River and Sea. Tiranë: Observatory of Mediterranean Basine, 2018, p. 48-58.

[12] The Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights is an international treaty that establishes compliance and inquiry mechanisms for the International Covenant on Economic, Social, and Cultural Rights. It was adopted by the UN General Assembly on 10 December 2008 and

opened for signatures on 24 September 2009. As of October 2018, the protocol has 45 signatories and 24 state parties. It entered into force on 5 May 2013. Albania is not part of it, and no standardization in the monitoring systems has been drafted or written into law.

[13] Some members of the Roma community have gained access to the social housing project in Shkoza, Tirana; however, they are isolated from the rest of the community and the city, and they share spaces with people who struggle with the same problems.

[14] *Frashëri, Argita* / *Semi, Valentina* / *Lilaj, Rudina* / *Çela, Enian* / *Vrioni, Lindita* / *Koleniço, Arlinda:* Remitancat: Një Mbështetje për Zhvillim. Tiranë: Banka e Shqipërisë, 2018. https://www.bankofalbania.org/rc/doc/Remitancat_Revista_11930.pdf (last accessed: 29 February, 2024).

[15] *Pressly, Linda*: Europe's Outdoor Cannabis Capital. BBC News, 2016. https://www.bbc.com/news/magazine-38111945 (last accessed: 29 February, 2024).

[16] *Special Taskforce of the Albanian Prime-Minister's Office***:** Albanian Government, UNDP, and ILD Peru: A Transition of Albania from Extralegality towards the Rule of Law. Report from the Prime Minister's Office. Tirana, 2008.

Chapter 7

International Promotion of Rule of Law: EU Conditionality, Formal Compliance and Informal Tactics of Resistance in the Area of Judiciary Reform

Arolda Elbasani

Abstract

The EU enlargement conditionality has been considered a key driver of institutional reform in aspirant and candidate countries. In particular, the EU has supported strengthening the rule of law as it underpins the whole set of values and legislation of the Union. This paper analyses the efficacy of EU enlargement conditionality in establishing rule of law, and specifically in reforming the judiciary in Albania. While EU conditionality set in motion and supported major institutional changes in the judicial system in Albania, I argue that the political elite used the EUs tick-the-box policy and mode of assistance to tighten its political grip over new judicial institutions. Institutional changes thus enabled the very phenomena that EU conditionality tried to prevent in the first place, that is, increasing political control of the judicial system. This raises important questions about the transformative power of the EUs enlargement conditionality in aspirant and candidate countries.

* * *

Introduction

The mainstream literature on the transformative power of EU enlargement holds EU conditionality as the most effective instrument to foster domestic change in candidate countries. Accordingly, by offering the rewards of EU membership, and specific entitlements including sizable assistance along the way, the EU entices domestic elites to comply with the ever-growing list of conditions to join the club. As long as the EU dangles the carrot of membership, articulates clear conditions about what the countries have to do and credibly offers the promised rewards upon compliance, the literature maintains that candidate countries will pursue a range of required reforms.[1]

Reformist elites, who want much the same as the EU in terms of domestic change, serve as the main 'conduits' of the EU led reform and, in return, benefit from the range of EU rewards. A social and political environment committed to the goal of European integration is a major boost for the transformative power of the EU conditionality, to the extent that a country's advancement on the ladder of integration serves to assess leaders' performance and informs consecutive rotations of power. Where European integration is considered 'the only game in town', elites that pursue EU-required reforms and take forward the process of EU integration stand a better chance to be elected and are generally empowered vis-à-vis more Eurosceptic groups.[2]

Albania formally fits all the criteria to be a best example of the transformative power of European integration. Since at least the 2000s, when the EU extended its policy of enlargement and related rewards to all Balkan countries, the country has been the subject of an elaborate and increasingly specific EU conditionality targeting key areas of reform. All the rewards that the EU can offer—membership, targeted assistance and intermediate rewards in between—are on the table. Furthermore, a set of innovations on enlargement tools, the recent one being the new methodology announced in February 2020, have further improved both the credibility and the consistency of the EU promises. Specifically, the new strategy has honed the EU's monitoring mechanisms while better connecting the required results with the associated rewards. In other words, the EU commission has gone the

extra mile to specify and monitor in minute detail the range of reforms that a country is required to do while promising that the targeted countries will be rewarded according to measurable standards. This is especially the case in the area of Rule of Law (RoL), where the EU conditionality has evolved into 'clear referents, time-sensitive targets, thresholds of monitoring, linkages between evaluation and progress of accession, and an elaborate definition of what progress means'.[3]

Besides the fortification of those tools that have proven successful to induce reform in the previous waves of enlargement, the domestic Albanian environment provides a fertile terrain for the transformative power of Europe, at least in theory. European Integration is the major stated goal of all relevant political groups and commands wide consensus across the entire spectrum of Albanian society and politics. Typically, the country's overall progress and advancement of key reforms are measured around advancement of European integration. The EU's annual reports, as well as the public declarations of EU officials and political leaders, are widely held as the ultimate source of evaluating progress and charting challenges ahead. Another important measure of the wide consensus that the EU commands in the country is public trust in European institutions, which consistently exceeds public trust in the country's elected or independent institutions—political parties, government, parliament, judiciary, police forces etc.[4]

Although Albania thus has all the necessary conditions to be a model pupil of the transformative power of Europe, the theoretical expectations don't match the reality on the ground. Bertelsmann Transformation Index (BTI) assessments confirm a trend of stagnation and even decline on key measures of RoL throughout the application of EU enlargement tools (Figure 27). In 2020 Albania had exactly the same score as in 2006 on key measures of RoL—separation of powers, independent judiciary and prosecution of corruption. Any periods of improvement are consistently undone by periods of decline, which tend to wipe out previous progress.

Figure 27. Bertelsmann Transformation Index (BTI) Scores on Rule of Law, 2006-2020.

	2006	2008	2010	2012	2014	2016	2018
Separation of powers	5	7	7	6	4	4	4
Independent Judiciary	5	5	5	5	4	4	5
Prosecution Of corruption	4	5	5	5	4	4	4

Data from Bertelsmann Stiftung Transformation Index, Albania Country Dashboard, https://bti-project.org/en/reports/country-dashboard/ALB. BTI evaluations use a scale of one (the lowest value) to ten (the highest value). Graph compiled by author.

In depth analyses of the state of RoL confirm this trend of stagnation. An independent report on the role of internationals and state of corruption, for example, attested to an all-around state capture: 'Albania has experienced a shift to almost complete control by the ruling elite ... where laws are used for exerting control by elites in power'.[5] Other reports hinted at a non-functioning judiciary as the underlying cause of widespread political corruption and impunity: 'high level officials are still above the law, even in the face of convincing evidence'.[6] A parliamentary report on the state of the judiciary published in 2015 confirmed a damning account of the level of political controls enabling a corrupt judiciary architecture.[7]

This paper explores the mechanism that explains the stagnation of RoL throughout the application and fortification of the EU enlargement conditionality. I argue that the insistence of the EU conditionality on quick and extensive institutional changes, and monitoring of progress based on formal institutional standards, has allowed political elites to use EU-demanded changes as an instrument to strengthen their political hold over independent institutions, thus asserting control over the newly reformed institutions. In the twilight of the EU promotion of RoL, this argument analyses three primary components of judiciary reform and EU conditionality.[8] Section I explores the EU prioritization of RoL in general and judiciary reform in particular, seeking to identify what the EU criteria consist of and how they have evolved. Section II analyses the scope of changes taken in response to conditionality, focusing on how related

institutional changes enabled increased political control over the judiciary system. Section III concludes by suggesting links between EU conditionality, related institutional changes, and increased political controls over the new institutions, the very phenomena that EU conditionality tried to prevent in the first place.

EU Conditionality: Fast and Persistent Institutional Changes as a Measure of Reform

The recent wave of Balkan enlargement has added new emphasis and policy innovations to RoL as one of the fundamental dimensions of the Copenhagen criteria with which candidate countries need to comply in order to advance on the ladder of accession. As the EU commission recently put it, 'Progress along the European path is an objective and merit-based process, which depends on concrete results ... with the rule of law ... being an utmost priority'.[9] The 2015 Commission particularly identified RoL and judiciary reform as the very backbone of its enlargement activities in the Balkans: 'All countries face major challenges with respect to the rule of law. Judicial systems are not sufficiently independent, efficient or accountable. Serious efforts are still needed to tackle ... corruption'.[10] Consequently, the Commission's annual country reports introduced comparable scales and lengthy assessments of RoL in all its emerging dimensions -judiciary, corruption, organized crime, and human rights.

Albania became a target of the EU's evolving emphasis on RoL from the early stages of its relations with the EU. The European Partnerships with Albania persistently identified the 'judicial system' and 'corruption' as short-term priorities the authorities needed to address in order to step up in the ladder of accession.[11] The EU documents also outlined the baseline agenda of judiciary reform: independence, competitive recruitment and transparency of the system.[12] The main tracks of judiciary reform sprouted into standard institutional recommendations oriented at ensuring independence of judiciary structures, particularly the key body in charge of appointment, promotion, inspection, and dismissal of judges, the High Council of Justice (HJC).[13]

EU priorities and specific demands in the area of RoL, particularly the judiciary, are backed by substantial EU

assistance and funding. Since 2005, the EU has funded a European Union Mission for the Consolidation of the Justice System in Albania (EURALIUS), a mission attached to the Ministry of Justice. Initially a generous 21 million Euro project financed by the 2002 Community Assistance for Reconstruction, Development and Stabilisation (CARDS) allocations, the EURALIUS mission is now in its fourth extension, has changed several 'contractors', and has received major shares of EU aid targeted at judiciary reform. The EURALIUS mission has joined the throng of international activity in the field of the judiciary and corruption, some of which is also financed by the EU. The EU, for example, has closely collaborated with and tacitly assigned to the Council of Europe (CoE) a crucial role in assisting RoL reforms, a collaboration that translated in various reform packages back in 1992, 1995 and 1998.[14] Later on, the CoE also directed the so-called PACO program, whose cost of 1.5 million € was paid by Germany and Italy. Other structures of the CoE, particularly the Venice Commission, have been closely involved in evaluating and directing ongoing legal and institutional initiatives in the area of justice. Other international actors that operate in this area of reform include the US's Overseas Prosecutorial Development Assistance and Training (OPDAT), the International Criminal Investigative Training Assistance Program (ICITAP), the USAID/JuST Project and the OSCE (Organization for Security and Co-operation in Europe) Presence in Albania, all of which, at different times, have funded some of the major technical projects supporting the Ministry of Justice (MJ) and HCJ, among others.

In general, most EU as well as other international actors' diagnoses, demands and assistance insisted on quick-fix formal institutional solutions—adoption of new strategies, reshuffling of the legal framework, and adjustment of judiciary institutions. Frequent institutional changes were almost automatically praised as progressive 'steps to improve the efficiency of the judiciary'.[15] Subsequent reported shortcomings necessitated yet more EU demands for swift institutional changes. Even when evaluations noted the reversal of the institutional gains, the EU organizations repeated the same formal requirements and insisted on yet new institutional changes, without really diagnosing how the

conducted institutional changes themselves were related to the noted shortcomings. The European Commission's 2010 opinion on the country's readiness to take on the obligations of membership, for example, noted 'risks to the independence of judges, as well as a lack of transparency and accountability'.[16] Yet, it repeated the same formal criteria that the EU had identified back in 2004—ensuring 'the independence, efficiency and accountability of judicial institutions'—this time around as necessary conditions to upgrade the country to candidate status.

Throughout the application of Enlargement conditionality, the EU persisted in demanding and evaluating progress in terms of completion of 'the legal framework'.[17] In 2012, the Commission's positive recommendation on the country's candidate status reflected the adoption of a set of pending laws on the judiciary, which required parliamentary consensus. By contrast, the blockage of the remaining bills in the consequent period, 2012-2014, generated negative evaluations regarding the postponement of 'much-needed laws'. By 2013, the EU annual report repeated: 'the judiciary institutional and legal set-up should be reviewed and strengthened ... essential legislation remains to be finalized ... '.[18] A 2014 special report on rule of law repeated anew that Albania 'would need to rigorously pursue judicial reform, through continued engagement with the Venice Commission and the adoption of significant additional provisions to strengthen notably independence and accountability'.[19]

What the EU annual reports and other monitoring mechanisms tend to miss is that, since the beginning of conditionality, the judiciary has become an ongoing and permanent construction site for EU led reform, which has resulted in the reshuffling of the entire institutional framework in line with the EU requirements. The other aspect of this overhaul of the institutional framework that the EU has also missed is the linkage between EU induced institutional changes and increasing political control over the system. It was only in 2015, after a decade and a half of directing and sponsoring a wide range of judiciary reforms, that the EU noted increasing political control over the new institutional architecture it had helped to build up: 'The independence of the judiciary ... in practice is jeopardised by the highly

politicized way in which High Court and Constitutional Court judges are appointed, and the wide margin of discretion enjoyed by the HCJ in appointing, promoting and transferring judges'.[20] Nowhere did it note, however, that these structures, including the much criticised 'margin of discretion' enjoyed by key judiciary actors, were insistently pushed by the EU within the frame of enlargement criteria, funding and assistance. By then, the parliamentary report on the state of the judiciary also highlighted that the very institutional set-up, which the EU had actively promoted, allowed political influence in matters related to 'appointments, status, career and discipline of judicial officials'.[21] The parliamentary report, however, also failed to highlight that the criticized judiciary structures were led, supervised and legitimized by the EU under the auspices of EU enlargement conditionality.

The Gap between Formal Compliance, Informal Resistance and Resulting Reforms

The extension of enlargement conditionality to Albania, similar to other cases in the Balkans, has generated fast track institutional change to align with the suggested EU models and targeted priorities.[22] During the first national poll held under the shadow of membership conditionality in 2005, all competing political parties aligned their promises with the EU integration agenda, including the emerging RoL priorities. Upon winning the elections, the Democratic Party (DP) translated its EU integration agenda into fast and comprehensive institutional reforms crafted to comply with the EU demands. A decade later, the parliamentary report evaluating the scope of judiciary reforms in 2015 found that: 'Thanks to EU conditionality, the reforms in the organization and functioning of the judiciary in Albania ... have been continuous'.[23] The range of institutional changes undertaken ensured a wholesale transformation of the institutional architecture.

Institutional and legal changes on different aspects of the judiciary followed each other: a law on the HCJ was adopted soon after election, back in 2005; a plan for reorganization of district courts in 2006; a law on the organization of the Ministry of Justice in 2007; a bill on the organization of the judiciary and a related law on judicial administration; a law

on the General Attorney (GA); and then a package of major constitutional amendments in 2008.

The DPs second term in power translated into yet other institutional changes. A major judicial reform strategy and action plan was adopted in 2011. Revisions to the law of immunity for judges and legislators, a law on judicial conference and a law on administrative courts followed in 2012. New laws on judicial administration, the High Court (HC) and territorial reorganization of courts followed in 2013. New rules for the removal of members of the HCJ, revisions to the law of the HC and the law of immunity followed after a new majority came to power in 2014. Every piece of legislation was packaged as a necessary step to bring the judicial system up to European standards and was linked to specific EU evaluations, priorities and legislative directives.[24]

At the same time, each piece of legislation and its related institutional changes provided a window of opportunity for the ruling majority to incrementally pack the judiciary with political loyalists. The 2005 law on the HCJ, the governing institution of the judiciary, for example, opened up an opportunity 'to appoint new members and change the political balance' if it were not reversed by the Constitutional Court.[25] Similarly, the 2006 reorganization of district courts left 24 judges and numerous administrative staff out of jobs. The 2007 reorganization of the Ministry of Justice further facilitated removal of existing employees while empowering the role of the executive in the functioning of the judiciary system.[26] The 2008 reorganization of the judiciary also transferred new powers to the Minister of Justice in nominating and discharging Court Chancellors. The follow-up law on judicial administration gave politically appointed Chancellors the power to nominate and remove judicial administrators, creating a hierarchical line of appointment extending all the way up to political appointees.[27] The battle to take control of the judiciary was more blatant when it came to the commanding heights of the system, particularly the presidency, then in charge of key judiciary appointments. Already during the period 2005-2006, the President's Office came under pressure to dismiss the General Prosecutor, whom the ruling majority accused of being lenient towards political corruption of the outgoing majority.

By 2007, independent reporting suggested that many of the EU requirements were being used 'for political ends'.[28] However, the refusal of the then-president to bend to political will and dismiss the general prosecutor showed that the system had developed some institutional resilience towards political pressure.[29] That resilience came to an end when the ruling majority resorted to unilaterally replace the outgoing president with a candidate from its close circle of leadership. The 2007 election of the new president, Bamir Topi, who at the time of the election was chair of the ruling party's parliamentary group, enabled the majority to control even more closely judiciary appointments that fell under the responsibility of the presidency. The General Prosecutor was soon replaced, as were other heads of key independent institutions. Subsequent independent reports suggested 'new ties between the ruling party ... the Constitutional Court and the High Council of Justice' through patronage appointments to these institutions.[30]

The choice of a political president opened the way to bolder moves to consolidate political appointments across the system. The 2008 constitutional amendments included a new formula for the election of the president which, in addition to institutionalizing the election of a political candidate, also cut the mandate of the GP to 5 years and empowered political control over all electoral institutions. The movement effectively 'constitutionalized' a winner-takes-all approach to power.[31] International reporting at the time warned of the risk of the judiciary's 'subordination to politics'.[32] By then, however, the president's nominations themselves were blocked for not being sufficiently in line with the ruling majority's increasing control over the system agendas. During the period 2008-16, for example, the parliament rejected 14 presidential nominees to the HC. To make sure that the presidential nominations were carefully screened for political loyalty, the parliamentary majority initiated a 'procedure' for consultation of presidential proposals. Given the lack of legal criteria for selection of judiciary appointees, the procedure only served to intimidate potential candidates and enabled lawmakers' complete discretion in the process of judiciary appointments.[33]

Political control over mechanisms of appointment in the judiciary was further consolidated in 2012 with the election of

a president chosen from the close ranks of the then-majority's leadership. The incoming president, Bujar Nishani, who had held only politically sponsored positions, including Minister of Justice in the 2005 cabinet and Minister of Interior in the incumbent cabinet, helped to strengthen party patronage networks across the judiciary.[34] Once in office, the majority's president replaced the incumbent GP, the vice chair of the HCJ and some of the HC members, practically those few high ranks of the judiciary that didn't have the approval of the ruling party. Packed with a political president as chair and a politically subservient vice chair, the HCJ itself became a political instrument in the hands of the majority.[35] A UNDP study pointed at the repercussions of the judiciary's networks of political loyalty and service protected by the formal mantle of independence: 'The judicial authorities in Albania are ... a good example of what could be considered justice corporatism, in which independence ... serves as an alibi to avoid responsible behaviour and fight corruption'.[36] Later, the Parliamentary report also hinted at the input of quick and often EU-led institutional changes or the way they were informally used by political actors to assert control over the system: 'the very nature of these [institutional] interventions has created the space for politics ... to seek control over the governance of the institutions of justice'.[37]

The Relation between EU-led Institutional Changes and Increased Political Controls

Typically, the literature on EU enlargement conditionality considers quick institutional changes as a measure of reform,[38] even more so if fast-paced institutional reshuffling converges towards the EU standards and requirements. The case of Albania shows that the country has indeed undertaken major institutional changes under the spell of conditionality. Within a rather short span of time, almost every single piece of legislation in the area of the judiciary was changed to align with the EU requirements.

However, the case of Albania also shows that these very quick changes to comply with EU demands could have been the problem itself by allowing and legitimizing de facto increased political control over the new institutions. When considering the gap between institutional compliance and

actual reform, it is exactly those EU-led institutional changes that paved the way to what they intended to eliminate—increasing political influence, lack of competitive recruitment and lack of transparency and efficiency within the system.[39]

How institutional compliance assisted and monitored by the EU translates into political controls and patronage schemes is a topic that requires further research, but the case of judiciary reform in Albania and similar cases across the Balkans indicate that fast changes tend to be more easily permitted by overlaps and legal uncertainty that enable political discretion.[40] As a report on Albania noted as far back as 2007, 'the ruling majority tends to favour passing new laws quickly ... so that the opposition, media, and civil society have little opportunity to analyse technical deficiencies'.[41] Almost a decade later, the parliamentary report elaborated some of the deficiencies that permeated the revised institutional framework: lack of criteria for judiciary nominations, nebulous independence of a politically elected president, overlapping tasks between Ministry of Justice and the HCJ, lack of rules for inspection of the HC and CC members, lack of legislation on national judicial conference and vague decision-making rules, tasks and responsibilities within the HCJ structure.[42]

Another issue related to legal deficiencies is the revision of wider rules that were not directly related to the judiciary but hinged upon its functioning. One such revision with immense repercussions for the independence of the judiciary system was the revision of the rules for the election of the president back in 2008. To the extent that they enabled a political president to infiltrate political appointees across the entire judiciary system, the constitutional amendments enabling the election of the president with a simple majority wiped out with one stroke all the progress of the institutional framework regarding judiciary reform. After 2008, the president, representing the ruling majority, did exactly that.

Yet these constitutional amendments, much like the wider wave of institutional changes that de facto tilted the balance of the judiciary towards politics, were not addressed by the EU and international monitoring mechanisms. Instead, they were applauded by the international actors, including the EU structures involved in assisting and evaluating reforms in

the judiciary system. In general, the EU positively evaluated these changes while setting yet new requirements for additional formal changes. All the legal initiatives undertaken during the period 2004-2015 easily passed the scrutiny of the EU conditionality and the myriad other international organizations, experts and projects involved. This kind of monitoring—based on a set of standard recipes, lacking nuance of country-specific wider institutional development, blind to historical and broader institutional processes of reform—creates a vicious circle of institutional changes that tend to go nowhere. As an Albanian analyst aptly notes:

> International organizations bring into Albania 'experts' in government reform. They come into the country with laws copied from their countries and think that if these laws are put into place, the problem ... will be addressed. The power elites politely listen to the international experts [and] agree to the new laws. The 'experts' return to their home countries ... and meanwhile, back in Albania, the new reform laws are simply not enforced or the politicians have no trouble getting around them. Then, the international organizations return to Albania with new 'programs' dealing with the exact same issues and the process starts all over again.[43]

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[1] See *Schimmelfennig, Frank*: European Regional Organizations, Political Conditionality, and Democratic Transformation in Eastern Europe. In: East European Politics and Societies, 2007 / Volume 21, 2007, number 1, p. 126–41; *Vachudova, Milada Anna*: EU Leverage and National Interests in the Balkans: The Puzzles of Enlargement Ten Years On. In: JCMS: Journal of Common Market Studies, 2004 / Volume 52, 2004, number 1, p. 122–138; *Boerzel, Tania / Risse, Thomas*: From Europeanisation to Diffusion: Introduction. In: West European Politics, 2012/ Volume 35, 2012, number 1, p. 1–19.

[2] *Elbasani, Arolda* (ed.): European Integration and Transformation in the Western Balkans: Europeanization or Business as Usual? Abingdon, New York: Routledge, 2013.

[3] *Elbasani, Arolda / Šelo Šabić, Senada*: Rule of Law, Corruption and Democratic Accountability in the Course of EU Enlargement. In: Journal of European Public Policy, 2018 / Volume 25, 2018, number 9, p. 6.

[4] *UNDP:* Trust in Governance 2019: UNDP Albania Public Opinion Poll, 11 May, 2020. https://www.undp.org/albania/publications/trust-governance-opinion-poll-2019 (last accessed: 29 February, 2024).

[5] *Primatarova, Antoinette / Deimel, Johanna*: Bridge over Troubled Waters? The Role of the Internationals in Albania. Sofia: Centre for Liberal Strategies, 2012.

[6] *Gjipali, Gledi*: Country Report: Albania (Nations in Transit). Washington, DC: Freedom House, 2013, p. 67.

[7] *Parliamentary Committee, Ad Hoc Parliamentary Committee on Justice System Reform*: Analysis of the Justice System in Albania. Report of the Republic of Albania Assembly. Tiranë: 2015, p. 8.

[8] The analysis covers the period 2005 to 2015. The starting period, 2005, represents the active exercise of conditionality and fast institutional changes in this area of reform. The analysis ends in 2015, ahead of a new wave of judiciary reform, which is still on course and thus impossible to assess.

[9] *European Union, Directorate-General for Communication*: A Credible Enlargement Perspective for an Enhanced EU Engagement with the Western Balkans: Six New Flagship Initiatives to Support the Transformation of the Western Balkans. European Commission Publications Office, 2018. https://data.europa.eu/doi/10.2775/902991 (last accessed: 29 February, 2024).

[10] See *European Commission*: Albania: 2015 Progress Report. Staff Working Document, Decision No. 213 (final). EU, 10 November 2015, p. 2. https://neighbourhood-enlargement.ec.europa.eu/system/files/2018-12/20151110_report_albania.pdf (last accessed: 29 February, 2024).

[11] *Council of the European Union (The Council)*: On the Principles, Priorities and Conditions Contained in the European Partnership with Albania. Decision No. 54. The Council, 2006.

[12] *Peshkopia, Ridvan:* Conditioning Democratization: Institutional Reforms and EU Membership Conditionality in Albania and Macedoni. London: Anthem Press, 2014, p. 122–123.

[13] *European Union*: Albania 2005 Progress Report. SEC Document, Decision No. 1421 (final). EU Commission, Brussels, 9 November 2005.

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Chapter 8

Odyssey of Reforms: The Hard Road toward Justice

Ledi Bianku

Old Habits die hard
Hard enough to feel the pain ...

—Mick Jaeger

Abstract

After the fall of the communist regime, a wholesale reform of the justice system that supported totalitarianism in Albania was necessary. Compelled both by internal needs for a judicial system that supports a functioning democracy and pressure from the international community to consolidate the institutions of democracy as quickly as possible, Albania implemented a series of changes to laws and legal structures from the 1990s and continuing through today. This paper maps the most important stages of judicial reforms in post-communist Albania, analyses the major legal and institutional changes of each period, and explains the politically motivated interventions in the judiciary as an effect of the legacies of the communist past. While there has been some progress in reforming the institutional and legal architecture of the communist judiciary in post-communist Albania, even the best of these reforms lacked conceptual foresight and cultural vigour and have hence been easily hijacked by the political elite to undermine the independence of the judiciary. In its

prolonged transition, Albania remains trapped in this vicious circle of attempting to reform of the judiciary only to have the political elite hijack the reforms and the judiciary.

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Foreword

This publication is dedicated to the reforms undertaken by the Albanian society and institutions during the transition period. Its compilers asked me to provide a contribution concerning justice reforms during this prolonged period of Albanian transition. In a stance over a decade ago at a conference about the judiciary,[1] I stated that a single article, in an isolated moment, cannot be exhaustive in the assessment of justice reforms. I stand firmly by this position and reaffirm that, on this occasion, what I have written in these pages makes neither the claim nor has the scope to make a full analysis of justice reforms over the last 30 years. As I have previously said and I repeat once again: one of the fundamental deficiencies of the reforms is the lack of a continuous independent analysis of legislative reforms alongside an analysis of the daily work of the judiciary. This is compounded by the lack of a doctrine that follows and supports, or criticizes, step by step, the work of judges and prosecutors, as well as other institutions operating in the field of justice. Understanding that these urgent issues remain, this article will therefore limit itself to the identification of some conceptual features of justice reforms during the transition period.

When Albanian society decided to embark on its path of transformation in the early 1990s, there was no doubt that a just society—at least more just than the one it had experienced for almost 50 years—was one of the main aspirations and impulses of this transformation. Despite the great uncertainties that arose regarding models, modalities, and the path to a just society, it is not at all superfluous to say that the Albanian society was a society that rightly sought to achieve this transformation through the transformation of the legal system that had almost completely suppressed them for approximately 50 years.

A just society depends upon a just legal system, first, because of the clear and unescapable connection and interdependence between society and law. This understanding

traces its roots back to ancient Greco-Roman philosophy. The renowned Latin tenet *ubi societas, ibi jus*, along with its variants,[2] articulates this Siamese twinning between society and justice. As the former President of the Italian Constitutional Court and Professor of Legal History Paolo Grossi puts it, 'law is probably the most faithful way a society has to live its history'.[3] Therefore, it seems that, even for the Albanian society, the crucial role of a modern justice system, respectful of the rule of law, democracy and human rights, was and is decisive to its social transformation and to opening a new chapter of its history. How clear and convinced the Albanian society and politics have been and are about this role will be briefly examined in the conclusions of this chapter.

Secondly, and in continuation of the above, Albanian politics and society understood from international partners[4] that the new model that Albanian society intended to create could only exist if it relied on the well-known trinomial: democracy, rule of law and human rights.[5] The ultimate institution that guarantees the compliance and the implementation in practice of the components of this trinomial is the judiciary. It is not at all superfluous to say that the judiciary is at the same time both the neuralgic node as well as the Achilles heel in the functioning of this trinomial.[6] I would not hesitate to say, in light of the first premise I mentioned above, that the success of justice and judicial reforms is the most tangible indicator of success of the transition to a democratic society.[7]

Thirdly, membership in a series of conventions[8] and international organizations, especially in the Organisation for Security and Cooperation in Europe[9] and in the Council of Europe, depend almost to a definitive extent on the will to make the justice system work in accordance with the basic principles and ways of functioning of the judiciary in consolidated democracies.[10] Although the European Union, under the first Copenhagen criterion,[11] has always demanded the proper functioning of the judiciary, it appears that drastic changes in the EU enlargement strategy on February 5, 2020 emphasized this by making the enlargement process contingent on reforms in the areas of rule of law and the justice system.[12] Of course, facing a social transition challenge (where transition includes institutional and legal transformations), the path

forward is determined by assessing the level of departure and the intended level to be reached. Clarification of these two moments is necessary not only to clearly identify intermediate and final social objectives, but also to identify the difficulties and obstacles that may slow down, deviate or even prevent the achievement of the intermediate or final objectives.[13] The following analysis too is oriented precisely by focusing on two key moments that condition the ongoing challenges that our justice system in general, and the judiciary in particular, have had.[14] Firstly, this chapter analyses the starting point of the democratizing reforms of the Albanian society. Secondly, the reforms that have been undertaken and their nature are described. Finally, in the form of conclusions, this chapter briefly analyses these judicial reforms.

Where did the Justice Reforms Start after the Democratic Changes?

You cannot evaluate the need, nature and difficulties encountered by our reforms in the justice system without analysing the social, political and legal situation of Albanian society in the early 1990s. The analysis of this situation is of fundamental, almost defining importance, not only to understand the direction taken but also to understand the result of justice reforms during the transition period and their significant impact on the state of the judiciary today.

Like other social and institutional facets of the country, in the early 1990s the justice system was under the influence of the communist system from which Albania sought to break away. This impact was clear in the legal basis of the regulation and functioning of the entire Albanian society,[15] and it was the primary factor affecting the functional mission of the justice system in Albania before the 1990s. Article 101 § 2 of the 1976 Constitution of the Socialist Republic of Albania clearly provided that:

> People's courts protect the socialist legal order, fight for the prevention of crimes, and educate the working masses in the spirit of respecting and enforcing socialist legality, relying on their active participation.

Despite the fact that Article 103 of the Constitution of 1976 provided that the court was independent and '... decides

only on the basis of law and ... gives the verdict on behalf of the people', the constitutional doctrine quickly and unequivocally clarifies the meaning of this kind of 'independence'.[16] As explicated in the 1984 Constitutional law of the PSR of Albania (Part III),

According to the Constitution and the law on judicial organization, judges can be removed from office only in three cases, i.e. when they are revoked by their constituents or by the representative bodies that elected them, when they are criminally convicted by a court decision and when they seek to be removed from office.

When you recall that the socialist legal order was based on party monism,[17] predicated on the class struggle,[18] and that human rights were subject to the general interest represented by the only ruling party, the framework in which the justice system operated in Albania is quite clear. The legal doctrine of the time best clarified and complemented the meaning of the mission and the role of the courts in Albania. According to this doctrine:

> ... the court is first and foremost an organ of revolutionary violence, of state coercion, which it exercises on behalf of the people as a state representative of the dictatorship of the proletariat.[19]

The courts were levers in the hands of the ruling party,[20] the only political formation that existed. As such, there could be neither a separation of powers nor could the courts function as a check on political power under the conditions of such dependence.[21] The Supreme Court in particular, as the highest judicial body in the country, was under the special care of the ruling party[22] and was asked to make the latter's policy its own. Through it, the entire activity of the judiciary in Albania was de jure and de facto under control.[23] Other significant factors that made it impossible for the courts to function as independent authorities or to evolve a professional self-organization of the judiciary that could nurture and regulate ideals of judicial independence include the 1960s dissolution of the Ministry of Justice and the abrogation of the lawyer's role in court proceedings.[24] These conditions of course led to a lack of basic guarantees in legal proceedings. Indeed, the vast majority of material and procedural provisions did not reflect the democratic aspirations emerging for the Albanian society in the early 1990s.

This legal basis and this political-institutional framework created the premises, terrain and insurmountable borders in which judges and all Albanian lawyers were formed and practiced their profession. The consequence was that the mandates of the dictatorship would constitute for years the conceptual and interpretative basis of the reasoning, behaviour and functioning of judges and lawyers in Albania, as well as their interpretation of the norms and basic principles of law. Those who had studied in the west before liberation were either shunned, intimidated, or converted. Others learned the role of courts and exercised the function of a judge according to the teachings of the Constitutional law of the PSR of Albania; either willingly or reluctantly, judges operated in a continuing dependence of the judiciary on the party and the political power. Of course, even during the communist period, there were lawyers and professional judges, from the lower courts to the higher ones, but the legislation, the institutional framework and the theoretical opportunities to advance professionally and to express independence and professionalism properly and sufficiently were so limited that, frequently, they gave up trying.[25] This situation continued for 50 years, becoming a way of thinking and acting, interpreting and enforcing the law.[26]

This was the situation from which the new justice system began its journey in the early 1990s. As briefly stated above, it turns out that the challenges faced by the judicial system at the beginning of democratic reforms were twofold. On the one hand, the entire organic, material and procedural legislative framework had to be changed in order to be in line with the democratic principles to which society wanted to adhere. On the other hand, the other challenge was for the human resources in the justice system, from judges and prosecutors to lawyers and pedagogues of law, to be able to act in the circumstances of this new normative and functional framework. The main challenge of the justice reforms was and remains exactly the transformation of these ways of thinking and acting among our judges and lawyers, the creation of that freedom but also personal and professional responsibility to observe only the law and justice.[27]

Therefore, the reforms in the justice system had to respond to these two challenges. This will be briefly analysed in the second part.

Course and Paths followed by Justice Reforms

In the context of the two challenges faced by the justice system in Albania in the early 1990s, there were two paths that the corresponding reform had to (and actually did) follow. First, the acts of the justice system had to be changed, and, secondly, the mentality had to be transformed and the capacities in the justice system increased or renewed. Although there have been developments throughout the 30 years of transition, influenced by the continued need to repair arising issues, to improve the functioning of the justice system, and to align with European standards, fundamental changes concerning both categories, of acts and officials of justice, can be grouped into three important stages. The following analysis focuses on the most salient and significant moments of these stages, as far as the space of this contribution allows.

1. Change of the Acts of the Justice System

1.1. The First Stage

The change in the basic acts of the functioning of the justice system began as early as May 1990, before the student revolution led to the founding of political pluralism. Apparently, the withdrawing communist regime realized it had to make concessions at this point. Thus, in May 1990, the Ministry of Justice was re-established[28] and the profession of independent lawyer was re-legalized.[29] However, the radical changes came after the first pluralist elections of 31 March 1991. Less than a month later, Law No. 7491 'On the Main Constitutional Provisions', dated 29 April 1991, approved the main principles and rules of organization and functioning of constitutional bodies in Albania. These provisions were intended to sanction as soon as possible the separation from the experience of the past 45 years. Clearly distinguishing between Article 101 § 2 of the 1976 Constitution, cited above, Article 3 of the Main Constitutional Provisions provides that:

> The basic principle of state organization is the separation of legislative, executive and judicial power.

These began to be complemented very quickly with other provisions of a constitutional nature, among which it is worth mentioning the Law for the Establishment of the

Constitutional Court and the Court of Cassation, as well as the Law on the Judicial Organization in Albania,[30] and the law that provides for a catalogue of human rights.[31] A number of other laws that directly influenced the change of the institutional concept of the justice system were also adopted immediately after the first pluralist elections.[32] The depoliticization and institutional independence of judges were sanctioned by law. The appointment and removal of judges could now only be done by the High Council of Justice, and judges had immunity in the exercise of their functions.[33] These emergency changes targeting depoliticization and the transformation of organizational, material and procedural laws were made mainly as amendments to the legislation of the previous regime and could not suffice. Work immediately began on drafting new Codes that would lay the foundations for the functioning of the justice system based on the principles of democracy, the rule of law and human rights.[34]

1.2. The Second Stage

It can be said that the second stage began after the riots of 1997. From a normative point of view, the most important act was the 1998 Constitution which was adopted with broad international assistance.[35] The new Constitution reaffirmed and consolidated much more clearly and in a more structured way the principles and organization of the institutions of the Republic of Albania (RoA),[36] and in particular those of justice. It clearly provides that:

> The system of government in the Republic of Albania is based on division and balance between the legislative, executive and judicial powers.[37]

The 1998 Constitution contains special provisions on the institutions that guarantee these principles, such as the basic provisions for the establishment and functioning of the Constitutional Court,[38] basic provisions for the organization of the judiciary[39] and the prosecution,[40] as well as guarantees for the independence, impartiality and professionalism of judges and prosecutors.[41]

The Constitution was followed by an important normative package which aimed to supplement and effectively implement some of its provisions. All justice institutions mentioned in

the 1998 Constitution,[42] as well as others,[43] were provided with organic laws which regulated in detail the establishment, organization and functioning of these bodies. Laws were also passed aimed at strengthening the autonomy and independence of the judiciary.[44] During this stage, changes were made to the main Codes,[45] influenced either by new normative developments, to a large extent in the context of harmonization of legislation with European standards, or, to a lesser extent, by jurisprudential developments, mainly of the Constitutional Court[46] or of the Supreme Court.[47] Furthermore, the functioning of the bodies provided by the Constitution, especially the Constitutional Court, would be an important element in the development of the functioning of the judiciary. To a lesser extent, the decisions of the European Court of Human Rights also had an impact.[48]

It should be noted, however, that in 2008 the 1998 Constitution underwent a rushed change and was not accompanied by a careful preliminary analysis or by extensive consultation. It can be said that these changes disturbed the balance provided by the 2008 Constitution.[49]

1.3. The Third Stage

The third stage of justice reforms began in 2014.[50] Under the pressure of international factors, including non-governmental ones, a wide and deep reform radically affected all previous structures of the justice system; the reform abrogated some structures and created new institutions, especially those dealing with the governance of the justice system. Reform was necessary to respond to the problematic situation in the Albanian judiciary due to politicization, corruption, incapacities, corporatism, and inefficiencies of the justice system. It aimed to provide answers to all these problems. It consisted of the largest changes that have been made to the Constitution since 1998 and a legal package that supplemented and implemented them. The reform package was unanimously approved by the Albanian political forces, under the ‹encouragement› of the key international actors. The main institutional changes concerned the abolition of the High Council of Justice as a governing body of the judiciary and its replacement by new bodies for the administration of justice, such as the High Judicial Council, the Judicial Appointments

Council, the High Council of Prosecution and High Inspector of Justice. The jurisdiction of the Constitutional Court and the subjects that can be addressed to it was also expanded, removing the limits provided by the old regulation of Article 131 of the Constitution.[51] Organic laws of constitutional bodies[52] and those on the organization and functioning of the justice system were reviewed or drafted from the outset.[53] In order to depoliticize and avoid constitutional stalemates, the process of electing judges to the Constitutional Court and the Supreme Court was changed. They also created a number of other institutions, with a focus on the fight against crime and corruption.[54] It is also important to mention Law No. 96/2016, 'On the Status of Judges and Prosecutors in the Republic of Albania', which consolidates their independence and treatment.

The proposal for this reform opened a wide debate in the country between political forces and actors, especially amongst civil society and professional associations of judges. The first projects of this reform, especially those made under the pressure of various political forces and civil society, went to the Venice Commission which gave a series of opinions on the reform's compatibility with international standards.[55] A number of provisions of the legislative package on justice reform were also subject to review by the Constitutional Court.[56] The most delicate—and perhaps the most significant—point of the philosophy of this new reform was the law on the control of the judges' and prosecutors' careers, or the so-called vetting law.[57] This law will be briefly analysed below. It should also be noted that other changes were made to the main Codes.

2. Changing the People of the Judiciary

It is interesting to analyse how the three most prominent stages of significant changes in the legislative and institutional framework of the justice system have been accompanied by changes of the people of the judiciary. This is about radical changes, which have been accompanied by the abrogation of institutions and the mass removal or replacement of judges and prosecutors, and not about natural and even necessary changes that, usually, take place in the justice system of every country. How and what impact these changes have had will be briefly analysed below.

2.1. First Stage

Returning to the first stage, following the first pluralist elections and the establishment of a system where the rule of law, democracy and human rights would be the main principles of the functioning of society and the interpretation and implementation of legislation, the question to be asked was whether judges and prosecutors who had served and risen in the communist system in which courts were dependent on the ruling party could implement these reforms. Moreover, there were judges who had been members of the ruling party. It is understandable that, in answering this question, it was necessary to consider the life and emotional burden of a significant part of Albanian society, and especially those persecuted by the communist regime—where persecution was carried out by judges and prosecutors of the communist period, sometimes with excessive zeal. Like any other communist country, Albania had its Vyshinskys.[58] The problem was whether it was necessary and even possible to set up a mechanism to remove all judges and prosecutors who had over-zealously served the communist regime, as far as it was doubtful if they could serve in a system that would be operated on completely different principles. On the other hand, considering the legislative changes that were taking place day by day, regulating the evolving legal interactions in the Albanian society required an increasing number of judges, prosecutors and lawyers that could be integrated in the new institutions of justice that were being created and that would deal with the completely new legal phenomena that accompanied transition. As after every revolution that overthrew systems, the response, at least in part, had revolutionary tones.

Although there was no form of lustration or vetting of judges, the fact that the justice system was fully organized from the beginning, including the establishment of the Constitutional Court and the Court of Cassation, allowed a considerable renewal of the judiciary. However, there was a large number of judges and prosecutors, especially in the lower levels, who continued to exercise their previous functions. Further, the People's Assembly continued to appoint judges to the Court of Cassation and the Constitutional Court, as well as to gradually elect senior judges and the Attorney

General. The judiciary thus maintained a substantial political character. Yet, it can be said that the appointments to the judiciary were generally justified by the career and professionalism of the judges elected, at least in their first election in 1992.

But it must be said that the conflicts between the new governing majority and the new judiciary arose a few months after the 22 March 1992 elections. These conflicts led to the dismissal of the Attorney General in November 1992, just three months after his appointment by the same parliamentary majority. The President of the Court of Cassation was also dismissed in September 1995, two years after being elected to that position by the same majority. These situations resurrected old demons, where politics realized that, for its own interests, it had to have justice under its control. In these conditions there were also judges and prosecutors who understood this fact and chose to exploit it for their career. It should be noted, however, that the fact that the High Council of Justice, a body with a majority of professionals in the field, already created the premises for maintaining the independence and professionalism of judges and prosecutors and the self-government of the justice system.

The most influential aspect of the judiciary during this period has been the appointment of graduates who attended an accelerated legal education program as judges, prosecutors and police officers.[59] While the aim was to fill the gaps in the justice system, it cannot be said that a 6-month course could prepare lawyers capable of responding with professionalism and responsibility to the great challenges that the justice system had in that period. It can be said that this solution had a long-lasting impact on the judicial system, with graduates from this course that went on to fill the ranks of the judiciary.

The growing number of students who could study at the Faculty of Law of the University of Tirana, increased by those studying at the new Faculties of Law, added to the influx of new lawyers in the justice system. However, this increase in quantity went along with inadequacies, such as decreases in the quality and capabilities of teaching in these faculties.

A key moment for capacity building in the justice system was the adoption of Law No. 8136, dated 31 July 1996, for the School of Magistrates, established according to the French

model, and with the support of the Council of Europe, the European Union and the USA. However, principles such as the independence and impartiality of judges and the non-termination of their legal mandate were still not clear amongst the judiciary itself, nor were they properly clarified by the courts. It should be noted that, at that time, Albania had just become a member of important international instruments, which may explain why international reactions to these problems were generally lukewarm.

2.2. The Second Stage

The adoption of the new Constitution of 1998 led to the abrogation of the main constitutional provisions of 1991 and all those that had modified them, which included the constitutional provisions for the establishment of the organs of the justice system, including the Constitutional Court and the Supreme Court. While the changes in the ranks of the Supreme Court judges were gradual, and the judges' mandates were respected, the same was not true for the members of Constitutional Court. The majority that emerged from the June 1997 elections entered into an open conflict with the Constitutional Court, going so far as to terminate the mandates of its members and its President and forcefully intervene to execute the decision of the Parliament.[60] A new Constitutional Court, with a completely new composition, was subsequently created. The same thing happened, specifically for political alliances, with two subsequent General Prosecutors.[61]

While at that time there was very little objection to this situation, it must be said that the en bloc ending of term of the members of the Constitutional Court constituted a violation of Article 6 § 1 of the European Convention on Human Rights.[62]

A less radical policy was adopted in relation to another category of judges. Article 45 of Law No. 8436, dated 28 December 1998 'On the Organization of the Judiciary in the Republic of Albania', obligated judges of the first instance with up to 10 years of experience to undergo a professional qualification exam. This solution created debates and led to the overthrow of a paragraph of Article 48 of the law by the Constitutional Court.[63] The imposition of a 10-year deadline for persons who would undergo the examination, which mainly aimed at appointments made by the previous political

majority, is not subject to any analysis by the Constitutional Court as to whether it constitutes a differentiated treatment and whether this dissimilar treatment is or is not discriminatory.

2.3. The Third Stage

The third stage of people change in the justice system has its origins in the justice reform that started in 2014, as discussed above. Inspired primarily as a reform that would remove the corrupt and the politicized from the justice system, it is not an exaggeration to say that the vetting process is the most tangible aspect, and perhaps even the raison d'être, of the justice reform that is still underway.[64] This process is provided for in a number of constitutional provisions and by a special law that regulates the organization and functioning of the responsible institutions as well as the pertinent procedures.[65] These provisions were subject to repeated assessment by the Venice Commission[66] and the Constitutional Court.[67]

The vetting process aims to cleanse the justice system of corrupt judges and prosecutors.[68] It seems that, even according to the Venice Commission, only such a major objective could justify such exceptional measures that raise many questions from the point of view of the independence of the judiciary.[69] The vetting process so far has consisted mainly of controlling the assets of incumbent judges and prosecutors. A thorough analysis of this process is beyond the scope of this chapter, which focuses instead on the prominent features of the reform. Despite the laudable goal of removing the corrupt, it is illogical that different processes apply to seated judges than to new appointees. If vetting is necessary to remove potentially corrupt judges, then why isn't it necessary to deter potentially corrupt judges from entering the justice system? These and other questions plague the vetting process, which has aroused numerous debates regarding the selection of persons conducting the process, their professionalism, the guarantees offered by this process, the proportional character of the measures taken, and the non-discriminatory character of the procedures. The first decision given by the Strasbourg Court on February 9, 2021,[70] still not final at the time of this writing, seems to legitimize the reform process but without providing an exhaustive answer to all of the problems raised,

especially regarding the other appeals pending before the Court.[71]

However, it can be said with certainty that the vetting process created a previously unknown shortage in the judicial system where, with only two exceptions, all judges of the Constitutional Court and the Supreme Court have been removed and, as of 2022, had not yet been completely replaced.

Conclusions

While this chapter can provide only a limited summary of the main features of the reforms in the justice system during the transition period, I will sketch the key points.

First of all, reforms in the former communist countries, and especially reforms in the field of justice, have to begin with an analysis of the legacy of dictatorship upon which these reforms were made or that they were intended to un-do. In order to be able to create justice systems according to the model of constitutional democracies led by the rule of law, reforms are made to detach from this legacy. At the same time, reforms are in relationship to this legacy, and the ability to detach from this legacy is the key element of success for justice reforms. This includes both institutional and personal detachments from any form of social, political, economic, and careerist dependence on political party power.

Secondly, in addition to the legislative and institutional changes in the justice system, most of the political changes since 1990[72] were followed by campaigns of dismissals of judges and prosecutors who were not seen as acting in conformity with the new political power. It is no exaggeration to say that this has been the main goal of the reforms, which has been implemented without regard to internationally recognized principles on the independence and sustainability of the judiciary. Our reforms in the justice system are essentially political rotations in the judiciary and the prosecution service that are dressed up and sold to internationals as reforms in the service of increasing the independence, impartiality and efficiency of the judiciary. In Albania, every party, once in power, has tried and often managed to create 'its own judicial power'.[73]

The haste in removing judges and prosecutors by vetting,[74] based on unclear criteria,[75] has been done at the greatest cost that a state and a society can pay in relation to the judicial system—the lack of courts and especially the Constitutional and Supreme Court. This situation, unique in European history since the creation of the theory of constitutional control by Hans Kelsen,[76] is unfortunately the *de jure* concretization of the doctrine 'The Fuehrer protects the law', one of the most shameful doctrinal positions in the history of constitutional law.[77] In the absence of courts, Albania has been in such a position for three years. The Albanian judicial system in the period we are talking about is objectively in the greatest structural and systematic crisis it has ever experienced—the inability to fulfil its function, either at all or with such long delays that it essentially denies justice.[78] It is difficult to consider that this reform aims for the better functioning of the justice system.[79] It is important to emphasize that the recent justice reform in Albania effects the Constitutional Court and the Supreme Court in ways that are similar to many reforms criticized in Hungary[80] and in Poland.[81] At its core, this 'reform' is an expression of the influence of political power in the judiciary, an influence that was normally limited to higher spheres.[82]

If it is clear that legislative changes have been largely influenced by the cooperation and participation in international organizations, and especially by the process of integration into the European Union, it seems that the change of the people of justice has been largely influenced by the political interests of the party in power.[83] This symbiosis in the political-judicial relationship, which was undoubtedly well rooted in the political-judicial mentality during the communist period, is the element that most significantly influences the reforms in the justice system in Albania. This symbiotic relationship characterizes the situation of the judiciary in Albania, and the reforms that have been made have not been able to break up this relationship.[84] The other obvious element of this relationship is the level of corruption in the justice system, which is nothing but an expression of the worldview that the judiciary is dependent on another power. As a case in point: the double standard in the vetting process. Candidates supported by the political majority

who could not justify their property objectively nevertheless passed vetting because they 'did not intend to hide it'. We may conclude, then, that if politics did not use judges for its own purposes—including political, electoral, economic/financial and clan purposes—then judges would not so easily be corrupted.

Thirdly, and following the above paragraph, the role of the judiciary itself has obstructed reforms of the justice system. Wanting to preserve a status quo that provides it with benefits, it has consistently been disinterested in and unengaged with reforms that would strengthen independence and judges' responsibility to the office. Albanian judges and prosecutors by and large understand independence as a personal privilege rather than a functional guarantee.[85] For the most part, the judiciary has been unable to remove through its representative mechanisms the corrupt and incompetent—because it is not accustomed to independence, which also means responsibility. When politics then took over the fate of the justice system, the judiciary thus found itself unprepared and powerless[86] to provide its alternative solutions.[87]

Fourthly, I have to reiterate: in the absence of both self-control and control by doctrine,[88] the only thing left to control our judiciary is politics. Society has only these three forms of control over the judiciary. Without constant control by its representative bodies and its doctrine, politics—combined with careerist lawyers—turns the judiciary into a damaging force.[89] The ongoing justice reform has shown us the destruction wrought by a legislative package lacking clear analysis and rushed into place within two years. This 'reform' has un-made much longer-term—and more just—reforms that had previously been made, also at the insistence of internationals.[90]

Justice reforms in Albania have been fundamentally conditioned either by international pressure[91] or by the political and social interests of the moment.[92] That is why we have not yet managed to make 'clean' justice reforms.[93] Our justice reforms have reflected the state we have created—which is still influenced by features of past forms of government and governance—and not the society we intended to create. Adaptation to European standards is carried out only under pressure and only when and until it serves the main

purpose, i.e., the mission of the political clan to replace one group of judges with another without touching the essence of the problem.[94] Just as the vast majority of our society suffers from the habit of political dependence, so does our judiciary fail to tear the umbilical cord from politics;[95] failing in this, it then falls victim to other forms of dependency. As Hannah Arendt puts it, 'the first essential step that leads to total domination is that which kills the legal personality of man',[96] i.e. independence. This is much worse for the people of justice.[97] Of course, the legal system operates within the social system,[98] and herein lies the difficulty of all our reforms, especially those in the field of justice. This is why, as in other former communist countries, young and foreign-educated judges fail to finally confirm the transformation.

We have made reforms, but I am not sure we have made the conceptual and cultural revolution in justice that can cultivate the consciousness of independence, intellectual individuality, scientific inspiration and a clear orientation towards the autonomous way of functioning of Western justice.[99] Such a revolution begins in the benches of the universities and continues on the podiums of the courts. But this is a long-term revolution—in the meanwhile, we will have done countless reforms required by the political or career interests of the day.

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[1] *Bianku, Ledi*: Reform as One of the 12 Priorities of the Challenge of Albania's EU Integration. In: Conference Proceedings from 'Who Judges the Judges?'. USAID: Tirana, July 2012, p. 29–47.

[2] See *Encinas de Muñagorri, Rafael:* Introduction Générale au droit. 5th ed. Paris: Flammarion, June 2019, p. 16–17.

[3] *Grossi, Paolo*: Prima lezione di diritto (The First Lecture of Law). Bari: Editori Laterza, 2003, p. 67.

[4] When I say 'understood from' I am referring to a statement made in April 2002 in Tirana, by Gianni Buquicchio, the President of the Venice Commission (at that time Secretary General of the Venice Commission), who said that when he visited the city for the first time in 1991, very few of the people he met were clear about the meaning of the principle of separation of powers. Buquicchio's speech, given at the Colloquium on The Constitutional Court as a Guarantor of the Respect of the Constitution: Problems and Perspectives, Tirana, April 2002, marked the 10th anniversary of the Court. Colloquium proceedings were published in the volume 10-vjet Gjykatë Kushtetuese (1992-2002), Tiranë: Shtypshkronja Klean, 2003,

and are available from the Venice Commission at https://www.venice.coe.int/WebForms/cocentre/default.aspx. (last accessed: 4 March, 2024).

[5] Koen Lenaerts, President of the Court of Justice of the European Union (CJEU), emphasizes that 'fundamental rights, democracy and the rule of law are interdependent, as long as neither can exist without the other', p. 348. See *Lenaerts, Koen*: The Two Dimensions of Judicial Independence in the EU Legal Order. In: Spano, Robert: / Motoc, Iulia / Branko, Lubarda / Pinto de Albuquerque, Paulo / Tsirli, Marialena (eds): Fair Trial: Regional and International Perspectives. Brussels: Anthemis, 2020, p. 333–348.

[6] See the *Committee of Ministers of the Council of Europe:* Recommendation to Member States on the Subject of Judges: Their Independence, Efficiency and Responsibilities, 2010, recognizing the role that judges play in guaranteeing democracy.

[7] See *Kochenov, Dimitry / Bárd, Petra*: The Last Soldier Standing? Courts vs Politicians and the Rule of Law Crisis in the New Member States of the EU. In: European Yearbook of Constitutional Law, 2018 / Volume 1, 2018, p. 243–288.

[8] The notion of rule of law and separation of powers is understood either by International Covenant on Civil and Political Rights, Article 14, UN Resolution 2200A (XX1), 999 UNTS 171, 6 ILM 368, 16 December 1966, published 1967, or by European Convention on Human Rights (ECHR), Articles 6 and 13, ETS 5, 4 November 1950. In relation to the latter, and especially to the independence of the judiciary, see the President of the ECHR, *Spano, Robert:* The Rule of Law as the Lodestar of the European Convention on Human Rights: The Strasbourg Court and the Independence of the Judiciary. In: European Law Journal, 2021 / Volume 27, 2021, number 1–3, p. 1–17. https://doi.org/10.1111/eulj.12377 (last accessed: 29 February, 2024).

[9] See *Organization for Security and Co-operation in Europe (OSCE), Ministerial Council*: Further Strengthening the Rule of Law in the OSCE Area, Decision No. 7, Paragraph 4, 8 December 2008. https://www.osce.org/mc/35494 (last accessed: 29 February, 2024).

[10] It is no coincidence that from the moment of the accession of the Republic of Albania to the Council of Europe, we were asked to sign and within one year ratify the European Convention on Human Rights together with additional protocols, including the right to an individual complaint to the European Court of Human Rights. See the Parliamentary Assembly of the Council of Europe, Opinion number 189, session 22, 1995, regarding the request of the Republic of Albania to become a member of the Council of Europe.

[11] See the Conclusions of the Copenhagen Summit criteria of 21 June and 22 June 1993. Those on the first date require the 'stability of institutions that guarantee democracy, rule of law, human rights and the respect and protection of minorities'. Also compare the EU-Albania Stabilisation and Association Agreement (SAA), Preamble, Paragraph 3, and Articles 1, 2, 13, 78, and 122.

[12] See Enhancing the Accession Process: A Credible EU Perspective for the Western Balkans. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the

Regions, Decision No. 57 (final). 2020 EU Commission, Brussels, 5 February 2020. Significantly, the strategy envisages that 'Negotiations on the fundamentals will be opened first / and closed last and progress on these will determine the overall pace of negotiations. Negotiations on the fundamentals will be guided by: 1. A roadmap for the rule of law chapters equivalent to the previous action plans will constitute the opening benchmark. Interim benchmarks will continue to be set. No other chapter will be provisionally closed before these benchmarks are met. 2. A roadmap on the functioning of democratic institutions and public administration reform. 3. A stronger link with the economic reform programme process to help the countries meet the economic criteria', p. 2-3. With this strategy, the former Chapters 23 and 24 of the former negotiation package are now considered as Chapter 1 'Fundamental Reforms'. See p. 7 of the Strategy. Temporary standards will continue to be set along the way, and no other chapters will be closed temporarily until these standards are met. Compare previous enlargement negotiation strategies, analysed for example in *TMC Asser Institute:* Handbook on European Enlargement: A Commentary on Enlargement Process. A. Ott & K. Inglis ed. See especially the chapter on the approximation of legislations, by A. Lazowski, p. 631 et seq. On the increasing importance of the notion in the internal functioning of the EU, especially due to the problems of some member states with its observance, see European Parliament Resolution of 17 December 2020 on the Multiannual Financial Framework 2021–2027, the Interinstitutional Agreement, the EU Recovery Instrument, and the Rule of Law Regulation (2020/2923 (RSP).

[13] Various studies show that the analysis of the initial state of reforms is also the starting point of any assessment of the need, typology, and adaptation of reforms in the judiciary realm. See *Dallara, Cristina*: Judicial Reforms in Transition: Legacy of the Past and Judicial Institutionalization in Post-Communist Countries. In: Joint Annual Meeting of the Law and Society Association (LSA) and the Research Committee on Sociology of Law (RCSL). Berlin: Humboldt University, 25–28 July 2007.

[14] Ibid. See especially analysis of the justice systems in Slovenia, Croatia, Romania, and Serbia during the communist period and the reforms for their transition to a democratic system.

[15] See Constitution of the People's Socialist Republic of Albania (PSRA), Articles 1–4, 1976.

[16] According to constitutional doctrine, 'the issue of the independence of the judiciary' according to the 1984 Constitution of the PSRA must be properly understood': 'First of all, it doesn't mean independence of the court intended as a state body, but independence of the judiciary in resolving a concrete case. The court is a body of our socialist state, it is led by the Party of Labour of Albania and is elected by the working masses. As a result, the court, like any other state body, is dependent on the representative bodies of the state, such as the People's Assembly and its Presidium, and on the people's councils, our Party and its political and ideological line—Marxism-Leninism, and the working masses which it represents', p. 102. 'When we say that the courts are independent', says Comrade Enver, 'this does not mean that they are out of the control of the people who elect them and of the Party. On the contrary, the control of the people and of the Party is above all. … As bodies of our socialist state, the courts are controlled and give account to the Party', p. 102–103.

[17] The 1976 Constitution of the PSRA, Article 3, Paragraph 1.

[18] Ibid., Article 4, Paragraph 1. See also textbook for Constitutional Law: *Fakulteti I Schkencave Politike Juridike*: E Drejta Kushtetuese e RPS të Shqipërisë, Pjese III. T. / Vol. 3 / number 126 f. Tiranë: Universiteti I Tiranë, 1984, p. 90**.**

[19] *Fakulteti I Schkencave:* Constitutional Law, p. 89.

[20] As the 1976 Constitution of the People's Socialist Republic of Albania explicitly states: 'As part of the superstructure, as a weapon in the hands of our state of the dictatorship of the proletariat, the courts in our country have responded to the needs of strengthening and developing the legal order, and the socialist legitimacy of the PSR of Albania. Led by our Party, the courts from the first days of the liberation of the country waged a fierce and comprehensive war against the enemies of the people and war criminals'. The 1976 Constitution of the PSRA, Article 3.

[21] Regarding the notion, the doctrine on Constitutional Law states: 'The courts, being a body of our socialist state, it is understood that they have the same basic duties as other state bodies. First and foremost, the court has the duty to protect the Homeland, the state, the socialism that is being built in our country, the Albanian Labour Party, which is the only leading political force of our state and society, and the rights and legitimate interests of our citizens'. *Fakulteti I Schkencave:* Constitutional Law, p. 102.

[22] It is no coincidence that the President of the Supreme Court in Albania for most of the period of the communist regime (1955–1958 and 1966–1990) was both a member of the People's Assembly and a member of the Central Committee of the Party of Labour of Albania.

[23] 'The instructions of the Plenum of the Supreme Court, like the entire legal thought, were guided by the politics and ideology of the communist regime'. See The History of the Supreme Court of Albania at https://www.gjykataelarte.gov.al/sq/ (last accessed: 1 March, 2024); also compare *Fraenkel, Ernst*: The Dual State: A Contribution to the Theory of Dictatorship. English ed. New York: Octagon Books, 1941.

[24] The Ministry of Justice ceased to exist on 14 September 1966. See *Islami, Halim*: Compliance of the Legislation of the Republic of Albania with Articles 5, 6, and 7 of the European Convention on Human Rights. In: Report on the Approach of the Albanian Legislation with the ECHR, Chapter 4. Tiranë: European Centre, 1999, p. 137. See also *Panda, Ilir*: The Judicial System in the Republic of Albania. In: Monitoring Albania's Progress towards European Integration. Tiranë: Friedrich Ebert Stiftung, 2003, p. 161–162.

[25] Compare with associations of Croatian judges in Croatia. In *Dallara, Cristina*: Smother Judicial Reforms in Slovenia and Croatia: Does the Legacy of the Past Matter? In: Democracy and Judicial Reforms in South-East Europe. Contributions to Political Science. New York: Springer, Cham, p. 87. https://doi.org/10.1007/978-3-319-04420-0_2. (last accessed: 1 March, 2024).

[26] See *Solomon, Peter H.*: Courts and Judges in Authoritarian Regimes**.** Cambridge University Press, 13 June 2011. https://www.cambridge.org/core/journals/world-

politics/article/abs/courts-and-judges-in-authoritarian-regimes/6F27F36DE1C888CC530AF34F814C0D4E (last accessed: 1 March, 2024).

[27] See *Seibert-Fohr, Anja*: The Challenge of Transition. In: Seibert-Fohr, Anja (ed.): Judicial Independence in Transition. New York: Springer, 2012, p. 1–15.

[28] On the Establishment of the Ministry of Justice, Law No. 7381, 8 May 1990.

[29] On Advocacy in the Republic of Albania, Law No. 7382, 8 May 1990.

[30] On Some Changes and Additions to Law No. 7491, Dated 29.04.1991, 'On the Main Constitutional Provisions', Law No. 7561, 29 April 1992.

[31] On an Annex to Law No. 7491, Dated 29.04.1991, 'On the Main Constitutional Provisions', Law No. 7692, 31 March 1993.

[32] Article 2 of On the Departmentalization and Depoliticization of Some State Bodies, Law No. 7492, 8 June 1991, provided: 'They are not allowed to belong to political parties, organizations or associations: Officers, non-commissioned officers of active service and civil servants who are in working relationship with the departments of the Ministry of People's Defence and the Ministry of Public Order, as well as in their schools and institutions, employees of the Ministry of Foreign Affairs and staff of diplomatic missions abroad, employees of the Ministry of Justice, courts, of the prosecutions and investigators, of the financial police, of the apparatus of the People's Assembly, of ATA (Albanian Telegraphic Agency) and ART (Albanian Radio-Television)'. See also On Some Changes in the Decree no. 7174, Dated 20.11.1987, Law No. 7535, 17 December 1991; On the Judicial Organization of the Republic of Albania, Law No. 7536, 17 December 1991; On Some Changes in the Criminal Procedure Code of the Republic of Albania, Law No. 7537, 17 December 1991; On Some Changes in the Code of Civil Procedure of the Republic of Albania, Law No. 7538, 17 December 1991; On Some Changes in Law no. 6298, dated 27.03.1981, 'On the Prosecution of the Republic of Albania', Law No. 7539, 17 December 1991; On the Amendment of Law no. 6800, Dated 29.06.1983, 'On the Investigation of the Republic of Albania', Law No. 7540, 17 December 1991; On Some Changes in the Family Code of the Republic of Albania, Law No. 7541, 18 December 1991; On Advocacy in the Republic of Albania, Law No. 7553, 30 January 1992; On Some Changes in the Criminal Code of the Republic of Albania, Law No. 7574, 24 June 1992; On the Organization of Justice and Some Changes in the Codes of Criminal and Civil Procedures, Law No. 7575, 29 June 1992; On an Amendment to the Civil Code of the Republic of Albania, Law No. 7850, 29 July 1994.

[33] *See Panda*: Judicial System in the Republic of Albania, p. 163.

[34] See the approvals of the Civil Code of the Republic of Albania, Law No. 7850, 29 July 1994; of the Criminal Code of the Republic of Albania, Law No. 7895, 27 January 1995; of the Code of Civil Procedure of the Republic of Albania, Law No. 8116, 29 March 1996; and of the Criminal Procedure Code of the Republic of Albania, Law No. 7905, 21 March 1995.

[35] Approved by the People's Assembly, Law No. 8417, 21 October 1998, and by referendum on 22 November 1998.

[36] The Preamble of the Constitution provides, as one of the primary objectives of

the new system: 'The determination to build a state of law, democratic and social, to guarantee fundamental human rights and freedoms … '.

[37] See the Constitution of the Republic of Albania, Article 7; and Article 4, Paragraph 1, which states: 'The law constitutes the basis and limits of the activity of the state'.

[38] Part 8 of the Constitution of the Republic of Albania of 1998, Articles 124–134.

[39] Part 9 of the Constitution of the Republic of Albania of 1998, Articles 135–147.

[40] Part 10 of the Constitution of the Republic of Albania of 1998, Articles 148–149.

[41] See, in particular, the 1998 Constitution concerning judges of the Constitutional Court, Articles 126–128 and 130; concerning judges of the Supreme Court, Articles 137–140; and concerning judges of other levels, Articles 143, 145, and 147.

[42] See *Panda*: Judicial System in the Republic of Albania, which points to the following laws: On the Organization of the Judiciary in the Republic of Albania, Law No. 8436, 28 December 1998; On the Organization and Functioning of the Constitutional Court of the Republic of Albania, Law No. 8577, 10 February 2000; On the Organization and Functioning of the High Court, Law No. 8588, 15 March 2000; On the Organization and Functioning of the High Council of Justice, Law No. 8811, 17 May 2001; and On the Organization and Functioning of the Prosecution in the Republic of Albania, Law No. 8737, 12 February 2001.

[43] See, for example, On the Organization and Functioning of Serious Crimes Courts, Law No. 9110, 24 July 2003; On the Organization and Functioning of Administrative Courts and the Adjudication of Administrative Disputes, Amended by Law no. 100/2014, Law No. 49/2012; and On the Organization and Functioning of the Judicial Police, Law No. 8677, 2 December 2000.

[44] See, for example, On the Establishment of the Office of Judicial Budget Administration, Law No. 8363, 1 July 1998.

[45] See, for example, the amendments to the Code of Civil Procedure (Law No. 8431, 14 December 1998; Law No. 8491, 27 May 1999; Law No 8535, 18 October 1999; Law No. 8812, 17 May 2001; Law No. 9953, 14 July 2008; Law No. 10052, 29 December 2008; and Law No. 122, 18 April 2013); Amendments to the Code of Criminal Procedure (Law No. 8813, 13 June 2002; Law No. 9276, 16 September 2004; and Law No. 9911, 5 May 2008); amendments to the Civil Code (Law No. 8536, 18 October 1999; Law No 8781, 3 May 2001; Law No. 17/2012, 16 February 2012; and Law No. 121/2013, 18 April 2013); and amendments to the Criminal Code (Law No. 8733, 24 January 2001; Law No. 9086, 19 June 2003; Law No. 9275, 16 September 2004, Law No. 9686, 26 February 2007; Law No. 10 023, 27 November 2008, and Law No. 23/2012, 1 March 2012).

[46] See, for example, the Constitutional Court, Judgment number 59, 5 November 1999; No. 31, 2 December 2009; No. 19, 1 June 2011; and No. 11, 5 April 2013.

[47] See, for example, the Joint Colleges of the High Court, Judgment No. 1, 26 March 2002, and No. 5, 11 November 2003.

[48] See, for example, the ECHR on *Xheraj v. Albania*, Application No. 37959/02, 28 July 2008, and Judgment No. 22, 9 March 2010; the Constitutional Court, Judgment No. 20, 1 June 2011 and No. 00-2010-1042, 9 July 2010; and the Criminal College of the High Court, Judgment No. 76, 7 March 2012.

[49] See the Constitution, Law No. 9904, 21 April 2008 (especially the amendments to Articles 64, 65, 67, 68, 87, 88, 104, and 105), and Article 149 (regarding the bodies operating in the field of justice in relation to the General Prosecutor). The amendments also abrogated Part 12 that dealt with the Central Election Commission, which the Constitution no longer regulated. Law No. 9675, 13 January 2007, made much more limited changes in Article 109 of the 2006 Constitution. See also Law No. 88/2012, 18 September 2012, for the changes in Article 73.

[50] The Assembly formally began Judicial Reform with the establishment of the Special Parliamentary Commission for the Reform of the Justice System, Decision No. 96/2014, 27 November 2014.

[51] Law No. 76/2016 amended several parts of the Constitution: Part 8 (the Constitutional Court); Part 9 (Judicial Power); Part 10 (Prosecution); and Part 18 (Transitional Provisions), specifically Article 179 that regulates the transition to the new justice system. An appendix to the Constitution is also specifically regulated by the vetting system for all incumbent judges and prosecutors.

[52] See On the Organization and Functioning of the Constitutional Court of the Republic of Albania, Law No. 8577, 10 February 2000; and On the Organization and Functioning of the Prosecution in the Republic of Albania, Law No. 97/2016.

[53] See On the Organization of the Judiciary in the Republic of Albania, Law No. 98/2016; and On Governing Bodies in the Justice System, Law No. 115/2016, which abrogates all previous laws that regulated the organization and functioning of the justice system.

[54] On the Organization and Functioning of Institutions to Fight Corruption and Organized Crime (SPAK), Law No. 95/2016, adds this structure in addition to the Serious Crimes Courts.

[55] See *Venice Commission*: Interim Opinion on the Draft Constitutional Amendments on the Judiciary of Albania, adopted by the Venice Commission at its 105th Plenary Session, Opinion No. CDL-AD (2015) 045. Venice, 18–19 December 2015; and *Venice Commission*: Final Opinion on the Revised Draft Constitutional Amendments on the Judiciary (15 January 2016) of Albania, adopted by the Venice Commission at its 106th Plenary Session, Opinion No. CDL-AD (2016) 009. Venice, 11–12 March 2016.

[56] See, for example, Judgment No. 55 (V-55/16), 27 July 2016; No. 57 (V-57/16), 29 July 2016; No. 2 (V-2/17), 18 January 2017; No. 34 (V-34/17), 10 April 2017; No. 41 (V-41/17), 16 May 2017; No. 78 (V-78/17), 12 December 2017.

[57] On the Transitional Re-evaluation of Judges and Prosecutors, Law No. 84/2016.

[58] Andrey Vyshinsky, lawyer, diplomat, and politician during the Stalinist regime in the USSR, is better known for being Attorney General of the USSR in the trials of 'great cleansing' in Moscow during the years 1936–1938, and for writing his doctrine in Theory of Judicial Evidence in Soviet Justice. See the Encyclopaedia Britannica entry: Andrey Vyshinsky. Britannica, 19 January 2024. https://www.britannica.com/biography/Andrey-Vyshinsky (last accessed: 1 March, 2024).

[59] See *Council of Ministers:* On the Opening of Courses for the Training of Employees of the Prosecution, Investigative Police and Courts, Decision No. 133, 26 March 1993.

[60] See *Assembly*: On the Development of Rotation in the Constitutional Court, Law No. 8307, 14 March 1998; and On the Dismissal of a Member of the Constitutional Court and Consequently that of the President of this Court Mr. Rustem Gjata, Decision No. 351, 14 March 1998. Regarding this situation, the Working Group of the Subcommittee on Constitutional Reform in Albania of the Venice Commission stated that 'The suspension of the Constitutional Court … is against the interests of all citizens of the state, depriving them of the right to defend their constitutional rights, while the state is deprived of the guarantees of one of the most important constitutional and democratic institutions'. See Meeting of the Working Group on Albania of the Sub-commission on Constitutional Reform with the Constitutional Commission of Albania, Opinion number CDL-CR-PV (1998) 004, 1998.

[61] Dismissals of General Prosecutors Rakipi and Sollaku.

[62] See the European Court of Human Rights judgments on *Oluji vs. Croatia*, No. 22330/05, 5 February 2009; *Kudeshkina vs. Russia*, No. 29492/05, 26 February 2009; *Mitrinovski vs. Northern Macedonia*, No. 6899/12, 30 April 2015; and *Baka vs. Hungary* [DH.M.], No. 20261/12, ECHR 2016.

[63] To highlight the shallowness of the analysis in the two-page decision on a situation that poses major problems for the independence of judges, one of the aspects of which is not to terminate the mandate without very strong reasons: the decision makes no reference international documents or jurisprudence, let alone the analysis and impact of the latter on the concrete situation. See Constitutional Court Decision No. 59, 5 November 1999.

[64] See *Merkuri, Erind:* Bodies of the Justice System Monitoring the Implementation of Justice Reform I. Tiranë: Institute for Political Studies, 2020, p. 32.

[65] See the Annex to the Constitution, Article 179/b and Articles A–G, as well as On the Transitional Re-evaluation of Judges and Prosecutors, Law No. 84/2016.

[66] See Final Opinion on the Revised Draft Constitutional Amendments on the Judiciary of Albania, Opinion No. CDL-AD (2016) 009, 14 March 2016; and Amicus Curiae Brief for the Constitutional Court on the Law on the Transitional Re-evaluation of Judges and Prosecutors (The Vetting Law), Opinion No. CDL-AD (2016) 036, 10 December 2016.

[67] See, for example, Judgment No. 2, 18 January 2017; No. 34, 10 April 2017; and No. 78, 12 December 2017.

[68] See Analysis of the Justice System in Albania**,** Opinion No. 824/2015, June 2015; and Venice Commission Final Opinion on the Revised Draft Constitutional Amendment Draft, Opinion No. CDL-AD (2016) 009, Paragraph 52, Strasbourg, 14 March 2016.

[69] Ibid., Paragraphs 62 and 66.

[70] Compare ECHR in the case of *Xhoxhaj vs. Albania*, Judgment No. 15227/19, 9 February 2021, with the judgment of the Grand Chamber of the ECHR in the case of *Guðmundur Andri Ástráðsson K. Iceland*, Judgment No. 26374/18, 1 December 2020, where the fact that the Minister of Justice had appointed judges to the court of appeal from a list approved by the judiciary, but not according to the ranking prepared by the latter was considered a violation of the 'established court by law'

for the purposes of ECHR, Article 6, Paragraph 1. It is also worth comparing with joint cases of the CJEU, Judgment No. C-585/18, No. C-624/18, and No. C-625/18, 19 November 2019, and the EU, Independence of the Disciplinary Chamber of the Supreme Court**,** Decision No. C: 2019: 982. In the relevant judgment dealing with judicial reforms in Poland and especially the independence of the Disciplinary Chamber of the Supreme Court in Poland, the CJEU has established three criteria that are relevant for concluding whether a tribunal, albeit established in conformity with the national legal provisions, can be considered independent or not under EU law. The CJEU held, first, that the fact that the judges of the Disciplinary Chamber were appointed by the President of the Republic, did not, per se, establish a relationship of dependency, provided that once in office the judges were protected from external pressure and did not receive instructions from the executive. Second, the CJEU noted that the Disciplinary Chamber was established at the same time and had jurisdiction over the Law on the Supreme Court that provided the early retirement of the sitting judges of the Supreme Court of Poland. Third, the CJEU observed that the Disciplinary Chamber, which enjoyed almost complete autonomy from the Supreme Court, was composed of newly appointed judges and not of sitting judges. The CJEU concluded that these three elements, assessed in combination, might raise doubts as to the independence of the Disciplinary Chamber under Article 47 of the EU Charter on Fundamental Rights. The comparison with the vetting institutions in Albania is quite easy to be made. The vetting institutions are elected by the parliament with no involvement of the judiciary, are competent only to apply vetting law, which is the very same law providing for their institutional establishment and are composed of persons who do not come from the judiciary, with one exception only. See also the joined cases of the CJEU, Judgment Nos. C 83/19, C 127/19, C 195/19, C 291/19, C 355/19, 397/19, 18 May 2021, and EU, Asociaţia Forumul Judecătorilor din România, Judgment No. ECLI:EU:C:2021:393.

[71] See, for example, the communication by the Court of the case *Sevdari vs. Albania*, Opinion No. 40662/19, 22 November 2019.

[72] The only exception so far being the majority that emerged from the 2005 elections.

[73] See *Yusuf, Hakeem O.*: Political Change and Judicial Reform: An International and Comparative Perspective. In: Transitional Justice, Judicial Accountability and the Rule of Law. 1st ed. New York: Routledge, 2010.

[74] Prime Minister Rama himself has stated that 'The vetting process is like the guillotine of the French revolution'. See *Rama, Edi:* Conference presentation at 'Justice for All'. ERTV broadcast, https://youtu.be/-ty8fqQtyaA, minutes 33:15–35:30 (last accessed: 1 March, 2024). Among the legacies of the French Revolution are the guillotine and the 26 August, 1789 Declaration of the Rights of Man and of the Citizen. The guillotine was abolished, although belatedly (see *Badinter, Robert*: L'Abolition. Paris: Fayard, 2000), and now only the Declaration of the Rights of Man and of the Citizen remain. It is still too early to say what legacy the guillotine will leave to Albanian justice**.** The immediate effects are still visible, with more than 30,000 files pending at the Supreme Court.

[75] It is interesting to compare the decision of the SAC (Special Appellate College) that terminates the mandate of a Constitutional Judge—concluding 'the subject

of the revaluation has not reached a reliable level in the assessment of property'—with the decision from King Zog on the removal of cassation judges, according to which 'The royal government, after finding that the conduct of the judges of the Court of Cassation was incompatible with their high mission and that the dispute between the members undermined the prestige of the Court, declared that the judges could not be retained in their functions. The royal government, aiming to purge the Court of Cassation and based on applicable laws, decided to dismiss all ten of its members. The decision was communicated to the interested parties by the Ministry of Justice: 'In a few days, the government will appoint new judges who present all the necessary guarantees for their high mission'. The former is reported in *Bebja, Auren:* The Reason for the Closure of the Court of Cassation by the Albanian Government. In Journal des Débats Politiques et Littéraires, 1932, number 2, 9 March 1932, p. 2 (cited in Opinion.al, 1 April 2020. https://opinion.al/opinion-kriza-kush-dhe-si-do-te-paguhet/ [last accessed: 1 March, 2024).

[76] *Kelsen, Hans*: La garantie juridictionnelle de la constitution. In La Revue des droits de l'homme, Paris: Giard, 1928, p. 226. https://ccfr.bnf.fr/portailccfr/ark:/16871/0013805344 (last accessed: 4 March, 2024).

[77] According to Carl Schmit, 'The Fuehrer protects the law against the worst forms of abuse, when in the moment of danger, he immediately creates law by force of his character as Fuehrer as the supreme legal authority'. *Schmit, Carl*: The Führer Protects the Law: On Adolf Hitler's Reichstag Address of 13 July 1934. In Rabinbach, Ason / Gilman, Sande (eds.): Third Reich Sourcebook**.** Berkely: University of California Press, 2013, p. 64. The demolition of the National Theatre in Tirana without the possibility of judicial review of the legal acts is one of the clearest examples of this situation.

[78] See, for example, the Albanian Supreme Court (Administrative Bench) decision that there is no violation in cases of lengthy proceedings because Albania is currently undergoing a judicial reform: Opinion No. 6/12/4, 24 June 2021; No. 2/2/1, 13 July 2021; and No. 8, 16 September 2021. This conclusion contradicts a well-established case law of the ECHR. As a recent example in relation to Albania, see the ECHR in the cases of: *Bara and Kola v. Albania*, Judgment Nos. 43391/18 and 17766/19, 12 October 2021, where violation is found for lengthy proceedings caused also by the judicial reform; Kriza e magjistratëve rrezikon rimëkëmbjen e drejtësisë në Shqipëri, Reporter.al, 30 August 2021. https://www.reporter.al/kriza-e-magjistrateve-rrezikon-rimekembjen-e-drejtesise-ne-shqiperi/ (last accessed: 1 March, 2024).

[79] It is interesting that we did not benefit, for this purpose, even from the experiences of the countries of the region. For example, in an interview, a Serbian justice reform expert said that if a lustration or vetting system had been implemented in Serbia in 2000, the Serbian judiciary would have been halved. See *Dallara, Christina:* Democracy and Judicial Reforms in South-East Europe: Between the EU and the Legacies of the Past. London: Springer, 2014, p. 162.

[80] Along with the ECHR on *Baka vs. Hungary* [DH.M.], Law No. 20261/12, 2016, see *Solyom, Laszlo / Brunner, Georg (eds.)*: Constitutional Judiciary in a New Democracy: The Hungarian Constitutional Court. Ann Arbor: University of Michigan Press, 2000; and cross reference *Trochev, Alexei*: Judicial Pluralism

and the Rule of Law: Lessons from Central and Eastern Europe (Conference paper presented at 'Judicial Reforms in the CEE Countries'). Université Libre de Bruxelles, November 17, 2006.

[81] See *Garlicki, Lech:* Constitutional Court and Politics: The Polish Crisis. In: Landfried, Christine (ed.): Judicial Power. Cambridge: Cambridge University Press, 2019, p. 159–160. See also the following CJEU rulings: *Commission Cases vs. Poland*, Opinion No. C-619/18, 24 June 2019; *Commission vs. Poland*, No. C-192/18, 5 November 2019; and *A. K. C. National Assembly*, Nos. C-585/18), CP (C-624/18), and DO (C-625/18); and *c.* Sąd *Najwyższy*, 19 November 2019. For the situation in other countries, see *Bugarič, Bojan*: A Crisis of Constitutional Democracy in Post-Communist Europe: Lands In-Between Democracy and Authoritarianism. In: International Journal of Constitutional Law, 2015 / Volume 13, 2015, number 1, p. 219–245; and *Blockmans, Steven / Hriptievschi, Nadejda / Panasiuk, Viacheslav / Zguladze, Ekaterine:* Integrity on Trial: Judicial Reform in Georgia, Ukraine and Moldova (Centre for European Policy Studies Paper), number. 2018/04, June 2018.

[82] This finding is also supported by international studies on judicial systems in former communist Europe. Regarding the judicial systems during the communist period in Croatia, Romania, and Serbia See *Dallara:* Democracy and Judicial Reforms in South-East Europe: Between the EU and the Legacies of the Past. New York: Springer, 2014.

[83] See *Popova, Maria*: Judicial Independence and Political Corruption: Electoral and Defamation Disputes in Russia and Ukraine. Doctoral dissertation, Harvard University, 2006.

[84] See *Ramseyer, Mark J.*: The Puzzling (In)dependence of Courts: A Comparative Approach. In: Journal of Legal Studies, 1994 / Volume 23, June 1994.

See *Chandranegara, Ibn Sina*: Defining Judicial Independence and Accountability Post Political Transition. In Constitutional Review, 2019 / Volume 5, December 2019, No. 2, p. 294-329.

[85] See the Request of the National Association of Judges of the Republic of Albania and the Union of Judges of Albania to the Constitutional Court, Tirana, 30 November 2016. On the intervention as an interested subject, see Union of Judges of Albania, in the case before the Constitutional Court, Incompatibility with the Constitution of the Law on Vetting, Tirana, October 24, 2016.

[86] See *Guarnieri, Carlo / Pederzoli, Patricia*: The Power of Judges: A Comparative Study of Courts and Democracy. Oxford: Oxford University Press, 2002.

[87] See *Bianku*: Who Judges the Judges. That conclusion is confirmed even if you keep in mind that beyond the 11 comments of court decisions mentioned, there are 10 more comments for the period from 1956 to 2017.

[88] See *Dallara*: Democracy and Judicial Reforms in connection with justice reforms, especially in Croatia during the Tudjman period and in Romania.

[89] It is significant to note that, so far, 133 of those expelled by vetting are former students of the School of Magistrates, an institution established and supported for years by the Council of Europe, the European Union, and the United States.

[90] See, in addition to the European Commission's annual reports on Albania, the ECHR judgments. However, the execution of these judgments shows the 'impure' efforts of the executive and the legislative in reforming the legislation and the judiciary. Thus, for example, the judgment *Xheraj vs. Albania*, mentioned above, although it had to do with a criminal case, did not lead as it should to the revision of the Code of Criminal Procedure for the reopening of Procedures but the Code of Civil Procedure—see letter *ë* of Article 494 added by Law No. 10 052, 29 December 2008, Article 13. Also, in the execution of the judgment *Marini vs. Albania*, No. 3738/02, 18 December 2007, amendments made to Law No. 8577, On the Organization and Functioning of the Constitutional Court, Article 73, Paragraph 4, 10 February 2000 (Point 6 of which was later amended by Law No. 9/2016, Article 67), seem to solve the problem but in fact only worsen it since findings of constitutional violations become practically impossible with as few as four members absent.

[91] See *Dallara, Christina:* The Successful Laggard in Judicial Reform: Romania Before and After the Accession. In: Democracy and Judicial Reforms in South-East Europe. Contributions to Political Science. Springer, Cham, p. 115. https://doi.org/10.1007/978-3-319-04420-0_3, (last accessed: 1 March, 2024).

[92] Here I am referring to the logic used by Hans Kelsen, when he states that 'the development of a pure theory of law, stripped especially of socio-psychological and political elements', is a 'problem, the treatment of which from the dominant doctrine shows in particular its need to be reformed'. See *Kelsen, Hans / Silverman, Paul*: The Problem of Sovereignty and the Theory of International Law: A Contribution to a Pure Theory of Law. Oxford University Press, 2021, p. 98.

[93] The swearing in of a candidate judge of the Constitutional Court before a notary public, an institution of private law—embracing the clear majority philosophy in the clash with the President, and forgetting such constitutional principles, of both the ECHR and the EU as the court established by law or the institutional balance—is a clear illustration of this problem. See the *Venice Commission:* Opinion on the Appointment of Judges to the Constitutional Court, adopted by the Venice Commission on 19 June 2020 by a Written Procedure Replacing the 123rd Plenary Session, Opinion No. CDL-AD (2020) 010, 19 June 2020.

[94] See *Russell, Peter H.*: Toward a General Theory of Judicial Independence. In: Russell, Peter H. / O'Brien David (eds.): Judicial Independence in the Age of Democracy: Critical Perspectives from around the World. Charlottesville, VA, London: University Press of Virginia, 2001.

[95] See *Arendt, Hannah*: The Origins of Totalitarianism. New York: Harcourt, Brace & Co., 1951, p. 198.

[96] See *Dallara*: Democracy and Judicial Reforms.

[97] See *Luhman, Niklas:* Law as a Social System. Oxford: Oxford University Press, 2004, p. 467. See also *Sweet, Alec Stone*: Courts, Social Change and Judicial Independence. *Robert Schuman Centre for Advanced Studies Global Governance Programme*: RSCAS Policy Papers, 2012/07, p. 33.

[98] See debate between MP Özlem Özen (SP), a specialist in justice issues, and the President of the Belgian Court of Cassation, in *de Codt, Jean:* Debate Between Politics

and the Magistrate: 'Justice is Experiencing a Cultural Revolution, it is Losing its Humanity'. Le Soir, 22 June 2020. https://plus.lesoir.be/308778/article/2020-06-22/debat-entre-politique-et-magistrat-la-justice-vit-une-revolution-culturelle-elle (last accessed: 1 March, 2024). The dilemma for the Albanian justice system is to experience a cultural revolution in which it gains its humanity and independence, traits that have never characterized it. See also *Gutan, Manuel:* Judicial Culture as Vector of Legal Europeanization. In: Guţan, Manuel: / Selejan-Guţan, Bianca (eds.): Europeanization and Judicial Culture in Contemporary Democracies: Exploratory Workshop (Proceedings from Sibiu, 10–12 October 2013). Bucureşti: Editura Hamangiu, 2014.

Chapter 9

Constitutional Justice in Albania: Milestones and Issues

Xhezair Zaganjori

Abstract

This chapter offers an insider's analysis of the role and position of constitutional justice throughout Albania's long transition. Having been privileged to serve as a member of the Constitutional Court, I believe that it is important to recognize that, given the abject conditions under which Albania began transition, the progress from 1990 until today has been significant. The first part of this essay, then, recognizes the milestones and accomplishments in Albania's constitutional framework and court. At the same time, in order to face the many issues still before us, we need an honest reckoning with the many issues that have prevented the court from serving justice in line with the country's needs and contemporary demands. This analysis is especially important as, to date, there have been no studies, discussions, publications, or genuine critical observations from academics in our country on the ways in which the Constitutional Court and Supreme Court decision-making have been clearly non-compliant with international practices. The second half of the essay thus maps endemic problems plaguing the Constitutional framework

and Court, including: lack of transparency, professionalism, and responsibility of those representing us politically and in the state institutions; drawbacks with the implementation of fundamental democratic principles and the rule of law; troubles with overcoming injustices and healing wounds inherited from the communist past; the political weaponization of the court, which has been used as an instrument to consolidate and grow political power; and the failure to address social disparities and insure fundamental human rights.

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Thirty-year-long transition. It all started with the December 1990 student movement cheering 'We want Albania to be like Europe', which pressed the communist government to acknowledge political pluralism. Among the main causes making the Stalinist dictatorship in our country weak at its knees: political suppression, tripled by severe economic issues and infringement of fundamental human rights; radical global-level changes stirring Central and Eastern Europe, in particular after the fall of the Berlin Wall; dramatic events in Romania and the breeze of freedom Voice of America sent to magically warm the Albanian people. However, democratic changes were put on track no earlier than the March 1992 pluralist elections. Meanwhile, political and social developments in the country were quite numerous. If juxtaposed with the sorrowful and miserable situation plaguing all spheres of life three decades ago, we can even define them as epochal. Nevertheless, the situation in Albania could and should have been better. Much better! None had ever thought back then that, even after a 30-year-long transition, there would still be so many issues affecting our daily lives: lack of transparency, professionalism, and responsibility of those representing us politically and in the state institutions; drawbacks with the implementation of fundamental democratic principles and the rule of law; troubles with overcoming injustices and healing wounds inherited from the communist past; issues with social disparities and supporting needy groups; the never-ending exodus of youth and of the hopeless. The transition, so to speak, continues. We are transitioning even nowadays, first waiting for the EU to open the negotiations for Albania's full membership, and now working the chapters for accession.

That's why anniversaries do well. They remind us to be critical about current milestones and issues of the past and to reflect and divide the tasks for the future. We should be proud that the well-known Konrad-Adenauer-Stiftung Foundation, which has been attentively following (and continues to do so) Albania's up-and-down journey towards democracy and Euro-Atlantic integration, took on this initiative of remembering and reflecting on the past.

Therefore, I would like to contribute to this initiative by addressing the role and position of constitutional justice over these years. The task is obviously not easy, for this brief analysis surely features subjective stances and judgments. I've had the honour moreover to be a member of this court. However, I'll do my best to remain unbiased, objective and cogent, because I believe that in addition to milestones, it would be best to highlight issues and setbacks that have marked constitutional justice during the era of big changes.

We have inherited the perception, embedded in the socio-political evolutions of the 19th and 20th-centuries, that revolutionary or substantial political and social transformations centre around the tension between wishes, ideas, and practices for rapid and comprehensive changes on the one hand and constitutionalism on the other. This is mainly because, while the front-line forces driving forward the break with the past and the establishment of a new economic and social system aim at the immediate implementation of radical reforms at all levels, constitutionalism, as a core value to a democratic state and as a political doctrine, asks for these changes to be mature and fully grounded in the constitution and legislation. This is the difference between the dictatorship we claim to have left behind and the pluralist society we seek to build. Therefore, in these circumstances, the fairest, most logical, and useful solution would be to concentrate our efforts in drafting a new constitution and then a new legislation based on the former. The process coincides with the establishment of new institutions, arrangements, functions, and activities completely different from previous ones. A constitutional court is definitely among them, as the best guarantee for the establishment and preservation of democratic and human values enshrined in the fundamental law and new legislation. They are righteously considered

the most effective tool to protect the constitutional order, guarantee sustainable development and protect human rights and fundamental freedoms.

As we all know, the genius idea of letting the judiciary control the legislation originates from the USA. Back in 1803, the American Supreme Court, chaired by the visionary Chief Justice John Marshall, made the historic decision in Marbury v. Madison, requiring unprecedented courage, to entitle courts at all levels to strike down laws or certain bills issued by the government if deemed unconstitutional.[1] The main focus was to guarantee, first and foremost, all human rights. This outstanding judicial idea and practice from the constitutional domain would, more than a century later, transfigure civil law by allowing and mandating special courts to exercise concentrated and specialized constitutional review.[2] In 1920, Austria would establish the first constitutional court, brilliantly designed by the famous Austrian constitutionalist Hans Kelsen.[3] However, in this particular case, it was aimed at guaranteeing the constitutional order through the abstract review of norms. The third constitutional review model would come only after World War II, in 1949, with the Constitutional Court of the Federal Republic of Germany, whose jurisdiction blended for the first time ever the famous American experience of fundamental human rights and the Austrian experience on constitutional review of norms.[4] The model would be extensively adopted by many other countries' civil laws, thus taking on a special role in the democratization of countries coming out of dictatorships or totalitarian regimes, including Germany itself. This is also the case of new post-communist democratic countries in Central and Eastern Europe after the 90s. Almost all of them have in place constitutional courts resembling the German system in terms of organization, functions, and powers, which, despite the multiple issues, debates, oppositions, and difficulties, managed to play a significant role in transitioning from authoritarianism to democracy. Thus, they have imprinted their mark (and are still doing so) in the constitutional transition and promotion of the best values of Western democracies.

Albania, just like most of the Central and Eastern European countries, took constitutional measures at the outset of radical political changes by establishing the constitutional

court, which was completely new to the country. The legal basis consisted of Law No. 7491, dated 29 April 1991 'On Main Constitutional Provisions'[5] and Law No. 7561, dated 29 April 1992 'On Some Amendments and Addenda to Law No. 7491, dated 29 April 1991 'On Main Constitutional Provisions'. The first law set out the basic principles for organizing the state, while the second law laid the foundations for the establishment of the Constitutional Court, among others. Pursuant to the law, 5 of the constitutional court's 9 members were elected by the Parliament, and the other 4 by the President of the Republic. They would hold office for 12 years. The Constitutional Court was actually established in May 1992. Its first decision confronted the previously total power of the Party of Labour by ruling a request of the Albanian Communist Party Central Committee unconstitutional. With the decision 'Declaring the Decision of the Council of Ministers "On transferring the Albanian Labour Party archives under the General State Archive Directorate administration" unconstitutional', delivered on 13 July, the Constitutional Court unanimously upheld the role of the constitutional court as an independent institution. The constitutional legal framework would be filled out one year later upon approval of the Law on Human Rights and Fundamental freedoms in 1993, which would pave the path for the Constitutional Court to adjudicate individual requests. From dictatorship to a law on individual human rights—definitely a miracle! An outstanding novelty enabling the fulfilment of the most important duty with which a democratic state is tasked: effective protection of citizens' fundamental rights.

However, the negative referendum on the 1994 new Draft Constitution of the Republic of Albania (RoA) and the long operation of the Constitutional Court based on the existing legal framework mentioned above were significant barriers to its ability to serve justice in line with the country's needs and contemporary demands. Nonetheless, the approval of the Constitution in 1998 would open up new perspectives for the Constitutional Court. The relevant provisions under the fundamental law defined it as one of the most important institutions in the country, tasked with guaranteeing compliance with the Constitution and its ultimate construction. On the other hand, its 9 members were now to

be elected by the President, upon Parliament's consent. The new constitutional provisions reduced their term to 9 years. The Constitutional Court itself interpreted its power to 'review individual requests concerning the infringement of their constitutional right to a fair trial', laid down in Paragraph f, Article 131 under the Constitution, as an obligation to review only those requests forwarding claims related to a fair trial in the procedural sense, as defined in Article 6 under the European Convention of Human Rights. This narrow interpretation, despite sufficient room for a broader understanding, already points to the limits under which the members of the court felt themselves able to operate. In fact, Article 131 is closely related to Article 42 of the Albanian constitution (the right to a fair and public trial)—both borrowed from amendments 5 and 14 of the Constitution of the USA; taken together, and with the precedent of the models from which they borrow, these allow for the understanding and addressing of the fair trial notion first and foremost from the substantial perspective, without excluding its procedural aspects, as practiced in USA.[6]

We should also mention that the first law on the RoA Constitutional Court organization and operation was approved in July 1998 (Law No. 8373, dated 15 July 1998), when the Constitution itself was missing. The new Constitution, which came into force four months later (28 November 1998), demanded the approval of a new law on the Constitutional Court (Law No. 8577, dated 10 February 2000),[7] which mirrored new arrangements and several international standards in the field of constitutional justice.

Justified as a crucial mechanism for democratic governance, the 2016 constitutional changes in the framework[8] of justice reform brought about many novelties for the Constitutional Court in terms of its membership, organization, and powers. Its nine members holding office for a nine-year term are now elected through a clear and detailed procedure,[9] aiming at rendering the Court more independent, enhancing accountability and better guaranteeing constitutional obligations. More specifically, the procedure foresees that, according to a three-year rotation system, three members will be elected by the President, three from the Parliament, and three from the Supreme Court plenary. Nonetheless, the members shall be elected out of the top three candidates in the

list drafted by the Justice Appointments Council, in line with legal criteria. This Council is an ad-hoc mechanism composed of nine incumbent judges and prosecutors selected by lottery for a one-year term. It is predominantly tasked with verifying the legal terms, as well as professional criteria and morals of candidates running for Constitutional Court members. On the other hand, the change made to Paragraph f, Article 131[10] under the Constitution became highly important, for it notably extended the powers granted to the Constitutional Court on reviewing individual requests. It expressly provided that any individual is entitled to submit with the court, in line with legal requirements, complaints against any public body action or court decision, anytime the individual deems that 'his/her rights and fundamental freedoms guaranteed by the Constitution have been infringed ... '. Based on these new constitutional finds, Law No. 99 in 2016 amended Law No. 8577, dated 10 February 2000, 'On Constitutional Court Organization and Operation',[11] which is still the main law regulating the activity of this highly significant institution.

As noted, the latest constitutional changes go back to the original version adopted 28 years ago. Constitutional Court members are elected by special constitutional mechanisms, and its jurisdiction on individual requests basically includes the entire spectrum of human rights and fundamental freedoms. However, it was clearly seen that the solution the 1998 Constitution provided for the election of the Constitutional Court members, including the President and the Parliament in this fragile and sensitive process, gave rise to many issues and prevented the normal operation of the institution. The Constitutional Court itself, through its deliberation on the case, had highlighted several times the need for close cooperation on the matter between the President and the Parliament, in line with the well-known *Verfassungstreu* principle.[12] According to this paramount principle of the German constitutional doctrine and practice, state constitutional mechanisms are tasked first and foremost with seriously addressing and fulfilling state duties, with the aim not to create institutional problems, setbacks, or drawbacks, for this seriously damages the state and citizens' rights. However, practically speaking, there's been constant tension and disputes between these two bodies when it comes

to exercising this power. It has already been established that such undesirable situations have been quite numerous in Albania, not only in co-habitation periods but even when the President has been proposed and elected by the majority. It's not normal at all that a state claiming to be seriously engaged in the democratic transition process fails to fulfil the most important constitutional obligation of all, i.e., appointing the Constitutional and Supreme Court members for their full terms as constitutionally mandated; from 1998-2016, this basic obligation of constitutional democracy has been subject to constant political interference. The issue became far more prevalent after 2013 and continuing through the most recent reform efforts in 2016.

The 2016 constitutional changes seemingly overcome this politicisation because, as noted above, Constitutional Court members will be elected by three separate constitutional mechanisms. Corollary to this, the ranking of the Justice Appointments Council has been devised so as to guarantee a responsible, integral, and professional membership based on objective criteria and impartial evaluation of aspiring candidates. However, despite appearances and contrary to what was hoped, it has been unfortunately noted that the elected Constitutional Court members have been primarily either political activists, inexperienced lawyers lacking the most basic knowledge of constitutional doctrine and review (and hence performing poorly), or even retired lawyers.

These problems notwithstanding, the new 2016 constitutional solution to establish the Justice Appointments Council (JAC) is, in my opinion, although not perfect, an improvement over what preceded. In an inexperienced country like Albania, characterized by frequent and prolonged political tensions and a democratically unseasoned society, it should be no surprise to us that such a new mechanism falls under the ongoing pernicious influence of entrenched customs and habits. In the short period of time since its implementation, facts to date clearly indicate that the decision-making of this Council can be manipulated. While the JAC offers some improvements, one must nevertheless ask, from the legal and formal perspective: why is this ad-hoc mechanism, with random composition, whose members are not held accountable for their decisions, trusted many times

more than the Parliament that's democratically legitimated and charged with political responsibility because it represents the sovereign? Or even more than the President, who is the Head of the State and represents the people's unity? These two important constitutional institutions should and could have had at least better access to documentation associated with the candidate ranking, or should have been entitled to ask questions or even seek further clarifications from the Justice Appointments Council. This may have mitigated the political appropriation and manipulations of the JAC to date.

The second most important novelty of the new regulations, the full constitutional jurisdiction on guaranteeing all fundamental rights,[13] should be hailed and strongly supported by each one of us. As the court, its people, and the country as a whole mature, this will become instrumental in making the RoA Constitutional Court an indispensable and effective tool serving to protect the best human values. This has been the case with the majority of constitutional courts in many countries in transition which have resorted to the German system. In all cases, in countries where individual complaints are crucial and taken seriously (*verfassungsbeschwerde*), this form of constitutional appeal provides real opportunities for the protection of the full spectrum of fundamental rights.

The constitutional and legal framework is definitely essential to the Constitutional Court organization and operation. However, what's paramount is its decision-making and engagement to protect the constitutional order, democratic values, and individual freedoms. In this light, we should firmly assert that, ever since its establishment, the Constitutional Court has played a positive role during the tough transition period. It's been the promoter of the best values of constitutionalism even though circumstances have forced it to operate in an environment full of political tensions and pressures and in a society with no background whatsoever in the rule of law and upholding human rights. We must remember that everything Albania currently has in this area has been, practically speaking, built from scratch.

In addition to the serious commitment and engagement of its members, cooperation with counterpart courts in the region and beyond through different forums for constitutional courts and international organizations and mechanisms has

been quite useful on this journey towards democracy and the rule of law. However, the ongoing dialogue with the Venice Commission, both in principle and on specific issues, should not go unmentioned. Through different forms of constitutional review, the court has settled not only specific disputes but has also guided the Parliament in drafting modern laws in line with contemporary standards and fundamental principles of liberal democracy. As examples, we can mention decisions on indemnification and integration of political prisoners and persecuted persons; judiciary independence; compliance with the Stabilization and Association Agreement; establishing and defining the role of parliamentary committees of inquiry; and the 1998 ratification of the Rome Statute.[14] Each of these examples of the rational solutions and standards employed by the Constitutional Court can be surely compared to those of the most developed and high-level countries with constitutional democracies. In addition, several decisions that must truly be hailed and highly appreciated include the decision on the abolition of capital punishment,[15] the Agreement for the Delimitation of the Greek-Albanian Continental Shelf and Maritime Areas between them,[16] as well as the decision on lustration,[17] though the latter was almost completely drafted based on the Venice Commission expertise.

While these big-issue decisions deserve to be singled out as examples of the Constitutional Court's serious commitment and engagement in creating the conditions for constitutional democracy based on human rights and the rule of law, we should not forget the day-to-day efforts of the court and its multiple decisions, made on an individual basis, that have attempted to interpret from a broader angle, but within the legal and constitutional boundaries, all the various elements related to a fair trial, as foreseen by Article 6 under the European Court of Human Rights (ECHR).[16] Thus, regardless of the constitutional review boundaries in this regard, the court has aimed at achieving the best citizen protection possible. Even so, we must acknowledge that this has come to fruition by reviewing individual complaints on the infringement of various fair trial elements, coupled with other forms of constitutional review of acts.[19] It's worth highlighting that, in almost every such case, the well-known international standard that the state is not and cannot be the

main source of fundamental rights because such rights ' ... are by nature indispensable, inalienable and inherent ... '[20] has been well considered or taken into account. State bodies are just charged with the supreme constitutional task of upholding such rights and contributing to their daily realization.

The same applies to most of the (above) pungent decisions made by the Republic of Albania's Constitutional Court. Therefore, we can conclude that the Constitutional Court in our country has frequently attempted to make positive and hyper positive interpretations, not only when it comes to legislative obstructions, but also in terms of its overall duties and powers, in tandem with or cross-cutting the teleological interpretation. In other words, the court has made all efforts possible to be active, because after all, just like many other experienced constitutional courts, it has deemed that the guarantee of a free and functional democracy should be its axis, based on the rule of law principle. This is also at the core of Hans Kelsen's pyramid on constitutional jurisdiction,[21] founded on the basic norm, which is nothing more than a hypothesis instrumental to achieving a specific objective.

In order to render this idea more concrete, please allow me to elaborate on a specific Constitutional Court decision—Decision No. 34, dated 2005—which aims at establishing the constitutional basis of the legal security principle as part of or as an essential component to the rule of law.[22] The decision makes reference to the rule of law only in its Preamble and not in its operative part. There's been a constant debate in the global doctrine as to whether the statements in the Preamble should be considered or not, either partly or fully, as a reference point to constitutional obligations. For example, the German Constitutional Court gave the Preamble in the Fundamental Law, especially to the rule of law principle, partial effect.[23]

According to this practice, our Constitutional court resorted to the same course of action in Decision No. 34, dated 2005. The decision literally reads: 'The rule of law, guaranteed in the Preamble of the Constitution, is among the most fundamental and important principles in a democratic state and society. As such, it consists of an independent constitutional norm; therefore its infringement is more than sufficient to declare a law as unconstitutional ... '. The

decision further emphasizes that ' ... one of the most essential elements of the rule of law principle is legal security, which, among others things, requires for the law in general, or special parts and provisions thereof, to be clear, well-defined and understandable in terms of content ...'. Given the many travails under which the court was formed and has operated, this must be singled out as a courageous and important stance. This decision has aided the Constitutional Court to review and resolve many other cases under its adjudication, which in one way or another were directly related to the legal security principle and with many other inherent elements of the rule of law.

While establishing the constitutional basis of the legal security principle as essential to the rule of law was an exemplary move by the Constitutional Court, there is less latitude for the court to make similar rulings for the social objectives. This is true not just in the Albanian case, but in the case of other constitutional democracies as well. Indeed, social objectives are frequently referenced under the Constitutional Preamble, but it is widely accepted that their fulfilment cannot be subject to the Constitutional Court review.[24] Their practical fulfilment is conditioned by many factors, with the practical and financial capabilities of a country being among the most important ones. The step-by-step fulfilment of social objectives is thus a legislative matter. The constitutional review may go hand in hand with this step, especially in the case of their gradual fulfilment; this would require the application of important constitutional principles, such as the principle of equality, non-discrimination, etc.

We should mention as well that the implementation of international law has been quite an aid to the Constitutional Court decision-making during this period. The RoA Constitution reserves it a special spot, thus enabling the extensive implementation of international Law norms in the Albanian reality. More specifically, article 5 under the Constitution highlights that the Republic of Albania implements the international law, which is binding, while Article 116 thereof, by defining the hierarchy of normative acts effective in our country, ranks the ratified international agreements after the Constitution and right before the laws approved by the Parliament. Article 122 further clarifies that

these (international) agreements are an integral part of the domestic legal system, are directly implemented, and in case of dispute, shall prevail over non-compliant domestic laws. Moreover, Article 17, tackling the restriction of fundamental rights, reserves for the European Convention on Human Rights the same spot as the Constitution. Paragraph 2 thereof expressly provides that in no case may these restrictions infringe the core of freedoms and rights, and in no way may they overstep the standards foreseen in this Convention.

International Law has thus provided a major head start for Albania, especially as a small and underdeveloped country still wounded by the communist past and a half century of total isolation, and with no proper experience in the field of international relations. It is thus particularly laudable that the Constitutional Court knew perfectly how to use this golden opportunity in its decision-making. The operative part of decisions makes countless references to this Convention, other bilateral or multi-lateral inter-state agreements, and decisions issued by international courts or supreme courts in different countries, especially the European Court of Human Rights (ECHR), European Court of Justice, German and Italian Constitutional Courts, the Supreme Court of the USA, etc. These references have granted the Constitutional Court decisions more legitimacy, authority, credibility, and acknowledgment in the Albanian reality. They have also aided the court to resolve legal obstruction cases and best reflect on the contemporary jurisprudence developments at the global level. In this regard, the commendable effort to bring into effect Article 5 under the Constitution, foreseeing Albania's general obligation to implement the international law, which is binding, has had a positive impact. Occasionally, this obligation has been interpreted as bound not only to the commitments assumed through ratified international agreements, but also as stemming from the so-called *ius cogens*, or *erga omnes* obligations, which are actually applicable to the entire international community.[25]

As important as noting accomplishments is for a balanced critique, it is as important that this special reflection, coinciding with the 30th anniversary of democratic changes in Albania, frankly include several personal viewpoints from an eye-witness on issues and concerns that have long been

associated with the RoA Constitutional Court decision-making. In truth, I'm quite remorseful that, during these 30 years of political pluralism, there have been no studies, discussions, publications, or genuine critical observations from academics in our country on the Constitutional Court and Supreme Court decision-making, in sharp distinction from other post-communist countries, including Kosovo. This analysis is especially important as the Constitutional Court has been clearly non-compliant with all the international practices for a long period of time; for example, it has not allowed the minority opinion to be published along with the majority opinion. This has certainly severely damaged transparency and the public and scientific discussions on the court's decision-making. However, within the margins of this article, I'll try to briefly introduce my own ideas on the work of the Constitutional Court, hoping that, in the future, the situation will normalize for the public and for the broader Albanian legal community.

In the first place, the Albanian pluralist state, lacking for nine years straight a genuine constitution which should have guided the process of revolutionary political and social transformations, turned into a major hindrance to successful reform. The state itself became an obstacle to establishing a sound constitutional basis for handling the multiple injustices inherited from the past and creating a vision for building a modern and democratic state. As a case in point, the negative constitutional referendum in 1994 brought devastating consequences to the Albanian state and society. Instead of promoting open dialogue and cooperation for the country's development, the refusal of the draft constitution further agitated the political situation in Albania. This was definitely a unique case among all Central and Eastern European countries that had already commenced their transformational journey. Similarly, the Constitutional Court, established in 1992, was left for seven years straight without its main working tool and source, i.e., the constitution, which would have helped deepen its decision-making.

In the second place, for more than one decade after its establishment, the decision-making of the Constitutional Court left much to be desired. Decisions in the first period of its operation are generally quite a few in number, extremely

short, and void of theoretical or doctrinal elaborations. This is especially noteworthy considering that some of its first elected members were prominent lawyers, educated abroad and persecuted by the communist regime. In addition to operating without a constitution until 1998, the serious lack of necessary support to this court also negatively impacted its function. For example, judges functioned without well-prepared advisors responsible for making inquiries and assisting with preparing legal files. Until 2005, out of 45 court clerks, including members, one-third were drivers, and only two of them were advisors. This ratio should have been reversed, as is the standard in other countries. Moreover, those two advisors were mainly attached to the Chief Judge of the court. The situation and the quality of work certainly improved in 2007 with the much-insisted decision to assign an advisor to every single Constitutional Court member. The latest constitutional and legal regulations have provided for a specialized and independent advisory unit within the Constitutional court, which will surely give a new impetus to the work of this new significant constitutional institution.

In the third place, Constitutional Court members have been selected without serious consideration of constitutional and legal selection criteria. Their appointments have frequently been politically motivated and disregarded candidates' lack of the necessary experience in constitutional adjudication or insufficient engagement in the field of human rights. In my view, this has impacted both the quality and impartiality of decision-making. There are many cases, especially those of a politically sensitive nature, where individual voting clearly confirms the stance of certain Constitutional court members. As a case in point, because of the court's abnormal engagement with the 2001 parliamentary elections, the Constitutional Court was stripped of the power to settle election-related disputes; this power was transferred to the Electoral College, whose members were selected by lottery from appellate courts. This was an unprecedented case in the entire history of SEE post-communist countries' constitutional transition!

Other such cases include the adjudication of the 2006 changes to the law on the organization and operation of the High Council of Justice (HCJ).[26] Neither the Constitutional legislation nor the 1998 Constitution mentioned whether the

High Council of Justice should operate part-time or full-time. The legal solution at the beginning of the democratic process was to assign it part-time operation. However, the new 2006 regulation defined the full-time engagement of HCJ members so as to enhance the independence, quality, review, and responsibility of judges.[27] The Constitutional Court objected to this law and declared it unconstitutional, arguing, among other things, that the judge in the capacity of the HJC member should exercise his/her function related to case adjudication on an ongoing and continuous basis. Ironically, the 2016 legal and constitutional changes have returned to the 2006 version that was overturned by the Constitutional Court!

In the fourth place, the Constitutional Court has frequently refused to hear cases based on unsound and faulty reasoning. For example, in 2001 the Constitutional Court refused to hear cases brought by the Ombudsman about the violation of human rights and individual freedoms. The line of reasoning was rather ludicrous: the majority interpreted the legal provision 'cases that interest him/her' as referring to the functioning and organization of the Ombudsman's Office per se and not with the fundamental civil rights and freedoms.

Even worse than unsound and faulty reasoning, some decisions clearly show how political power uses the court as an instrument to consolidate and grow its power. One such egregious abuse is Constitutional Court Decision No. 15, with the subject: Invalidating the Maritime Agreement between Albania and Greece, dated 15 April 2010.[28] In this case, a request by five political parties to bring this case in front of the Constitutional Court was—rightly and unanimously—denied based on the fact that the parties had no direct interest involved, as defined by the constitution and the international constitutional case law. According to these, political parties may appeal with the Constitutional Court only those acts that are claimed to interfere with their organization and functioning, such as the role of political parties in establishing the political will; electoral process; or cases connected with equality and political parties' funding. However, the majority of Constitutional Court members (five out of nine) decided to legitimate only the Socialist Party address to the Constitutional Court.[29] Their reasoning was that: a) the SP Statute specified the party's intention 'to

protect and promote national interests'; and b) that the SP had won 65 seats in the latest parliamentary elections (2009) (although they didn't swear in and refused to occupy their seats due to their objection to the electoral result). On these grounds, the majority deliberated that the Socialist Party met the quorum of at least 28 MPs, which is the minimum needed to address the Constitutional Court when the parties have no direct interest involved. This decision is equivalent to the DP, if it were in opposition, addressing to the Constitutional Court a request to invalidate an international agreement signed by the majority SP Government with the argument that the DP would potentially have at least 28 MPs as a result of the just-held elections. The blatant politicization of this case is obvious, but, to ground my objection in the law, consider: political parties are not legitimated based on their Statute affirmations, for they are not commercial companies or NGOs. Moreover, these affirmations have also been outlined in the statutes of other political parties. Moreover, the request filed with the Constitutional Court on the constitutionality of the said agreement could have been forwarded by other constitutional subjects such as the President or Supreme Audit Institution Chair.

Finally, the rectification of the injustices of the communist regime, especially concerning properties, is an extremely fraught and complex problem that has dominated the entire 30 years of transition. The constitutional and legal framework in this regard has frequently been contradictory, especially in terms of measures to restore and compensate immovable properties nationalized, seized, or confiscated during the totalitarian dictatorship. While the Constitutional Court tried through various forms of review to adjudicate cases, they were unsuccessful due to the lack of clear constitutional regulations; decisions made in its first years of operation were thus unclear, inconsistent, and not compliant with international standards on property cases, especially those defined in Article 1 under the Protocol of the European Convention of Human Rights. Moreover, politicians have unconscionably exploited this issue for electoral purposes. Consequently, since 2000, property-related cases have flooded the European Court of Human Rights. Many decisions were made against Albania, including one pilot and two quasi-pilot

decisions issued from this court. However, Albania has not been able to benefit from the jurisprudence of this important court on property cases as have other countries in transition because of its delayed admission to the Council of Europe (July 1995) and to the Strasbourg Court (1999).

Property issues continue to plague the country, and crimes against property are the starting point for illegal development and money laundering. Among the Constitutional Court Decisions that do not value properly the right to property are: Law No. 7501 dated 19 July 1991 'On Land'; and Law No. 7698 dated 15 April 1993 'On Property Return and Compensation to Former Owners'.[30] The first law (7501) hastily decided to give land to agricultural households, thus declaring them 'owners', without first conducting clear and in-depth studies or establishing well-defined criteria and strategy for land allocation. This allowed enormous room for corruption amongst judges, who would rule in the favour of the highest bidder. The amount and kind of land allocated were all for sale (for example, urban, coastal, and even nonarable lands were qualified as agricultural). Thus, the agrarian *sui generis* reform clearly damaged the interests of legitimate former-owners. Not only were they not allowed to regain their unfairly expropriated lands, but they were also left with no alternative compensation because the fund of agricultural lands was used up in the blink of an eye. There was only the cash compensation option available, which became a huge burden to the state. The consequences of this fiasco are ongoing, despite the contribution of the European Court of Human Rights. The Constitutional Court had several opportunities to rectify the consequences stemming from the law but failed to do so.

The Constitutional Court also could have been engaged in the second law mentioned above, 'On Land Return and Compensation to Former Owners'. But still no success. For example, Decision No. 4, dated 8 April 1994,[31] doesn't even consider the legitimate rights of former immovable property owners. Quite the contrary, the Court stood against them by giving priority to the so-called 'new owners'—people who, immediately after pluralism, took advantage of the chaotic situation and illegally occupied land. Similarly, in Law No. 7501, the majority decision recognized trade unions as

owners of the many former Professional Unions' movable and immovable properties. The properties were mainly holiday apartments for workers whose *de-jure* state ownership had never been put into question before. Moreover, even if the dispute between the trade unions and the state would be eligible for review, common courts and not the Constitutional Court should have been charged with the task.

Conclusion

These were the main issues that, according to my opinion, the Constitutional Court faced during the transition. The faults surely do not overshadow its commendable work when it comes to protecting the constitutional order and guaranteeing fundamental rights. We hope for the court to better engage in the future and be more successful. The Constitutional Court in Albania, just like in other countries, must be independent and above the influence of political interests and actors. As crucially, CC judges must not misuse their power. In democratic governance, this power is exercised and goes hand in hand with the trust that the state, other institutions, and most importantly, the people have in its decision-making.

I will not venture to analyse the new legal framework on the constitutional review (amendments with Law No. 8577),[32] especially when the issues and their respective remedies will be provided by the jurisprudence of this court in the future. There are many positive changes, such as allowing more subjects to address the Constitutional Court, considering the *amicus curiae* input, establishing dialog with the Strasbourg Court in line with Protocol 16 of the Convention, and changing the time frames for submitting a request to the Constitutional Court. However, I can't help but mention the peculiarity of not securing the required majority of 5 judges for deliberation. Article 74 under the previous law provided for the refusal of a request, thus enabling the requester to re-submit the same request later on. The Strasbourg Court has, rightly, ruled this a violation of the principle of due process and the law was changed. However, the new option could lead us to paradoxical situations. Article 73 under Law No. 8577 provides that, when there is no majority of 5 judges, a request should be refused, while Article 72, as amended, requires that the

Constitutional Court decisions should be reasoned. However, Article 32 under the very same law allows the Constitutional Court to review cases with as few as 6 members. Some cases are heard by a full panel of judges, while others by as few as 8, 7, or 6 judges—this is indeed abnormal. If only 6 or 7 judges sit in the panel, it may happen that four judges vote to accept the request, while the other 2 or 3 refuse it (i.e., refute it). Should this be the case, the decision should be reasoned with the points made by the minority, while the majority should provide its counterarguments. The best option would be to guarantee the constitutional review anytime with a full panel of 9 judges, in the name of the 'equality before the law' principle and 'court designated by law' standard.

In a small country like ours, dominated by conflicts of interest, we could have followed the example of counterpart international courts and provided for the lottery-based substitution of certain judges for specific cases. The constitutional judges could have been well substituted by High Court judges, appellate judges satisfying the criteria to hold trial in the High Court, or even distinguished professors teaching constitutional law. Alternatively, trials may be planned by a small number of judges—by, for example, 7 judges selected in a lottery. Whatever the solution, the number should be fixed and procedures standardized for every case going under the Constitutional Court review.

Albania's constitutional framework and court have passed many milestones, which we should remember as we are facing the many issues still before us. I am honoured to have had a place in the annals of our transformation, long and ongoing as it is, and I thank the Konrad-Adenauer-Stiftung Foundation for this opportunity to remember and reflect on the past.

[1] *Marbury v. Madison*, Opinion No. 5 U.S. 137 (1803). *Justia U.S. Supreme Court Center*: https://supreme.justia.com/cases/federal/us/5/137/ (last accessed: 1 March, 2024).

[2] *Venice Commission:* European Commission for Democracy through Law, Strasbourg, 12 November 2015, p. 1. https://www.venice.coe.int/webforms/documents/ (last accessed: 1 March, 2024).

[3] Ibid., 7 July 2010, p. 2.

[4] Basic Law of the Federal Republic of Germany, 23 May 1949. https://www.cvce.eu/content/publication/1999/1/1/7fa618bb-604e-4980-b667-76bf0cd0dd9b/publishable_en.pdf (last accessed: 1 March, 2024).

[5] On Main Constitutional Provisions, Law No. 7491, 29 April 1991. https://shtetiweb.org/wp-content/uploads/2015/10/Dispozitat-kryesore-kushtetuese-1991.pdf (last accessed: 1 March, 2024).

[6] Compare the Constitution of the United States of America, Amendments 5 and 14 (https://constitutioncentre.org/media/files/constitution.pdf [last accessed: 1 March, 2024]), with the Constitution of the Republic of Albania, Articles 42, Paragraph b and 131, Paragraph f. https://www.gjk.gov.al/web/constitution_of_albania_2090.pdf (last accessed: 1 March, 2024).

[7] Ibid., Amended by Law No. 99/2016 and No. 45/2021. Also see On the Organization and Functioning of the Constitutional Court of the Republic of Albania, Law No. 8577, 10 February 2000. https://www.gjk.gov.al/web/constitutional_court_law_1855.pdf (last accessed: 1 March, 2024).

[8] Constitution of the Republic of Albania, Article 131. https://www.gjk.gov.al/web/constitution_of_albania_2090.pdf (last accessed: 1 March, 2024).

[9] Ibid., Article 125, Paragraph 1.

[10] Ibid., Article 131, Paragraph f.

[11] On Constitutional Court Organisation and Operation, Law No. 99/2016, amended by Law No. 8577, 10 February 2000. https://www.gjk.gov.al/web/constitutional_court_law_1855.pdf (last accessed: 1 March, 2024).

[12] Federal Constitutional Court (Entscheidungen des Bundesverfassungsgerichts [BVerfGE]), Decision No. 39 and Decision No 8. https://www.bundesverfassungsgericht.de/EN/Entscheidungen/Amtliche Sammlung BVerfGE/Amtliche Sammlung BVerfGE.html (last accessed: 1 March, 2024).

[13] On the Organisation of the Judicial Power in the Republic of Albania, Law No. 98, Article 4, 2016. http://www.gjykataelarte.gov.al/web/ligj_nr_98_2016_organizimi_pushtetit_gjyqesor_1727.pdf (last accessed: 1 March, 2024).

[14] *International Criminal Court:* Rome Statute of the International Criminal Court, 1998. https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf (last accessed: 1 March, 2024).

[15] Constitutional Court of the Republic of Albania, Decision No. 65, 10 December 1999. https://www.gjk.gov.al/templates/NEModules/kerkese_list/konsulto.php?id_kerkesa_vendimi=341&language=Lng1 (last accessed: 1 March, 2024).

[16] Ibid., Decision No. 15, 15 April 2010. https://www.gjk.gov.al/include_php/previewdoc.php?id_kerkesa_vendimi=793&nr_vendim=1 (last accessed: 1 March, 2024).

[17] Ibid., Decision No. 9, 23 March 2010. https://www.gjk.gov.al/include_php/previewdoc.php?id_kerkesa_vendimi=784&nr_vendim=1 (last accessed: 1 March, 2024.

[18] European Convention on Human Rights, Article 6. https://www.echr.coe.int/documents/convention_eng.pdf (last accessed: 1 March, 2024).

[19] Constitution of the Republic of Albania, Article 131.

[20] Ibid., Article 15, Paragraph 1,

[21] *Marmor, Andrei*: The Pure Theory of Law. In: Zalta, Edward N. (ed.): The Stanford Encyclopedia of Philosophy, 2021. https://plato.stanford.edu/entries/lawphil-theory/ (last accessed: 1 March, 2024).

[22] Constitutional Court, Decision No. 34, 20 December 2005. https://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php (last accessed: 1 March, 2024).

[23] Compare the Preamble of the Basic Law of The Federal Republic of Germany with that of the Constitution of the Republic of Albania.

[24] Ibid., Article 59.

[25] Ibid., Article 5.

[26] Constitutional Court, Decision No. 14, 22 May 2006.

[27] Regulation on the Election of Judge Members of the High Judicial Council, 2006. *http://www.gjykataelarte.gov.al/web/draft_rregullore_1876.pdf* (last accessed: 1 March, 2024).

[28] Constitutional Court, Decision No. 15, 15 April 2010.

[29] Ibid.

[30] *Constitutional Court:* On Land, Law No. 7501 19 July 1991. https://www.vendime.al/wp-content/uploads/2015/08/Ligj7501-dt.-19.07.1991-fl.5.pdf (last accessed: 1 March, 2024).

[31] Constitutional Court, Decision No. 4, 8 April 1994.
https://www.gjk.gov.al/include_php/previewdoc.php?id_kerkesa_vendimi=185& nr_ vendim=1 (last accessed: 1 March, 2024).

[32] Amended by On the Organization and Functioning of the Constitutional Court, Law No. 99, 2016; No. 45, 2021; and No. 8577, 10 February 2000.

Chapter 10

Transition Without Justice in Post-Communist Albania: Its Implications for Collective Memory Building and Democracy Promotion

Altin Gjeta

Abstract

In the early years of post-communist transition, Albania undertook several ambitious transitional justice measures. Political dissension and competing interests, however, left the country unable to successfully implement these measures and hence to effectively reckon with its communist past. This paper elucidates the factors that impeded transitional justice efforts in Albania and analyses how failing to bring communist-era perpetrators to justice and make a clear break with the totalitarian past has distorted collective memory and gravely undermined the democratic transition. Moving beyond a simple analysis of the failures of transitional justice, this paper is especially concerned with how a distorted collective memory of communism continues to enable authoritarianism and corruption, polarize Albanian society, and legitimate continued abuses of power. In this way, I illustrate the direct causal relation between transitional justice and democratisation.

* * *

Introduction

Albania instituted one of the most Stalinist regimes in Europe under the communist faction after it consolidated power at the end of World War II. Its rule lasted roughly half a century and, according to Krasniqi, during this period approximately 20 percent of the population was subject to interrogation, arrest, imprisonment, torture, or exile.[1] To make the situation grimmer, Amy asserts that the regime executed over 6 thousand people, many of whom were secretly buried in mass graves and whose bodies were never recovered.[2] This array of crimes, ranging from state surveillance, public lynching and expropriation, to atrocities such as psychological and physical torture, life imprisonment and execution, was carried out by an oppressive and secret apparatus in the hands of the communist political leadership. According to Austin and Ellison, the political police, known as *Sigurim*i (in Albanian), employed some 10 thousand full-time agents and a quarter of the adult population as part time informers.[3] This repressive security mechanism is estimated to have affected the lives of as much as one-quarter of the country's total population.[4] An architecture of state terror was built to sow fear and unconditional obedience among the population.

It was in this context that Albanians witnessed the fall of the Berlin Wall and the anti-communist revolutions triggered across Central and Eastern Europe. These currents swept through Albania at the beginning of the 1990s, leading to the overthrew of its communist dictatorship. At this time, there were big hopes for socio-political change, including addressing the state's past human rights abuses and thus bringing about a moral reckoning with the country's communist history. However, the regime change fell short of these aspirations as the 'new' elite showed a lack of political will and consensus to sincerely deal with the past and prosecute perpetrators of human rights abuses. As Fijalkowski points out, 'attempts at addressing the past have been half-hearted, politically motivated and vague'.[5] While Albania did prosecute a handful of its communist elite in the early 1990s, they were charged for committing economic crimes, not for crimes against humanity.[6] This is puzzling given that, in fact,

Albania undertook some transitional justice measures that, on the surface, seemed ambitious. Dig deeper, though, and we see that there was a large gap between formal mechanisms such as criminal trials, lustration and reparatory legislation, and the way that these mechanisms were used. Not only did these formal mechanisms not bring justice to Albanians, they often served the interests of the same people who, under the regime, had abused their power. This is one the most persistent pathologies of the transitional justice enterprise in post-communist Albania.

One of the reasons transitional justice has been largely overlooked in post-communist Albania is the lack of human resources, funding and scholarly interest in the matter. Most of the work on this issue has been done by foreign scholars. However, they often merely historicised transitional justice measures undertaken in Albania. Though they offer a rich analysis of the variables that hindered transitional justice practices and inquiry, their work generally exhibits little analysis of the implications of this for collective memory building about the state's past abuses or how this failure impedes the development of democratic norms and principles.[7] Fortunately this is changing and, recently, there has been a growing attention in Albania to transitional justice and, more broadly, on reckoning with the communist past.[8] There is a general agreement among scholars that Albania has failed to seriously deal with the communist state's human rights abuses.[9] Nevertheless, its consequences on collective memory making and its correlation to the democratisation process are generally under-researched. Therefore, this paper's aim is not to merely elucidate the factors that impeded transitional justice in Albania, but to go beyond this and analyse the implications of this failure on collective memory building about the communist past and the effects of this on democratisation. Uncovering this link between collective memory making regarding Albania's totalitarian past and the direction transition has taken illuminates some of the primary problems Albania has encountered in its efforts to build a functioning democracy.

Conceptualising Transitional Justice

John Elster, in his book *Transitional Justice in Historical Perspective,* traces the beginning of transitional justice practices back to ancient Greece, when the Athenians restored democracy after a short period of oligarchic rule around the 4th century B.C. The new regime undertook a combination of transitional justice measures such as retribution, restorative practices and amnesty in order to re-establish and consolidate Athenian democracy.[10] While Elster notes an ancient lineage for transitional justice, Teitel contends that the modern roots of transitional justice can be found at the end of World War II with the introduction of the Allied-run Nuremberg and Tokyo Trials in 1946. Following these modern attempts to instigate a regime of international accountability for crimes committed during the war,[11] transitional justice became a well-established practice and inquiry in the aftermath of authoritarian rule in Latin America and the Apartheid regime in South Africa.[12] By the time the Cold War ended and communist regimes in Central and Eastern Europe began to fall, a practice of international intervention in conflict resolution and democratisation missions had emerged.

Until 1989, communist regimes across the board inflicted gross human rights violations in the form of judicial and extrajudicial killings, arrests, massacres, forced deportations, property confiscations and administrative purges, amongst others.[13] With Cold War totalitarian regimes falling, regions ranging from the Balkans to sub-Saharan Africa and south Asia plunged into intra-state conflicts with humanitarian consequences on a scale not seen since the end of World War II. This proliferation of multiple post-conflict and post-totalitarian settings with deep ethnic, social and political cleavages demanded immediate remedies to heal the wounds of the past, restore justice, and achieve social reconciliation. In this context, a growing body of literature emerged highlighting the pivotal role that transitional justice measures can play in rebuilding societies coming out of post-conflict and post-authoritarian regimes. Transitional justice was suddenly considered a silver bullet in dealing with past state-led human rights abuses and transitioning post-conflict, post-authoritarian societies towards democracy.

Transitional justice thus emerged as a mechanism of activity and inquiry that focuses on how societies address

legacies of past human rights abuses, mass atrocity or other forms of severe social trauma in order to rebuild (or build) a more just, democratic and peaceful future. While a consensus on the value of transitional justice was evolving, theorists and practitioners continued to debate mechanisms, practices, and applications in different cultural contexts. Kritz argues that 'it is broadly and contentiously defined and it can be understood most basically as the way a society confronts the wrongdoings of its past with the goal of obtaining some combination of truth, justice, rule of law and durable peace'.[14] More specifically, Kaminski, Nalepa and O'Neill define transitional justice as 'formal and informal procedures implemented by a group or institution of accepted legitimacy around the time of a transition out of an oppressive or violent social order, for rendering justice to perpetrators and their collaborators, as well as to their victims'.[15] As reckoning with the past came to the forefront of the international community, practitioners of international law and political theorists began to see it as crucial to completing the transition from a dictatorial regime to a new liberalising one. Thus, during the last three decades, transitional justice has become a buzzword in post-conflict and post-authoritarian scholarship.[16]

For the purposes of this analysis, I am considering transitions as political and social transformations in process, marked by legal, political, social, and historical ruptures and discontinuity. In this regard, transitional justice as Rush asserts is 'an enterprise that governs the directionality of the transformation—coming to terms with a legacy of atrocity as well as setting right standards for the future'.[17] In this sense, transitional justice measures, be they formal or informal, legal or non-legal, serve as a gap-filling mechanism between the past and the future as well as between historical discontinuity and continuity. This argument rests on the widely held assumptions that transitional justice practices and inquiries are justice corrective, truth seeking and establishing, as well as liberalising and ultimately democratising.[18] To reach these goals, transitional justice combines a wide range of practices and mechanisms, ranging from formal and informal measures such as trials, lustration or screening, through reparatory measures to vindicate the dignity of victims, to truth and reconciliation commissions, apologies, and memorials

and counter-narratives that break with previous totalising narratives to find and establish a shared understanding of the past.

More narrowly, transitional justice, as Teitel contends, is commonly linked in the public imagination with punishment and the trials of *anciens régimes*.[19] During post-conflict or post-dictatorial transition, criminal justice institutions may include the establishment of ad hoc or permanent international tribunals like that of the former Yugoslavia or Rwanda as well as International Criminal Courts and national trials. Transitional justice scholarship places a great deal of emphasis on the importance criminal justice can play during times of political flux to bridge the periods of diminished rule of law. Criminal trials aim to bring to justice perpetrators through due processes of law.[20] This measure is assumed to draw a bold line between the old regime and a new beginning, thus laying the necessary conditions for the emergence and consolidation of democracy. As Tietel argues, 'trials offer a way to express both public condemnation of past violence and the legitimation of the rule of law necessary to the consolidation of future democracy'.[21] Plausibly, publicly discrediting the *ancien régime* and its actors serves also as a mechanism to create a counter historical narrative of the past in light of the present. But in order for an alternative perspective on the past to take hold, the public must be able to believe the new narrative that exposes previously repressed abuses. To this end, 'trial truths have special credibility due to stricter rules governing the admissibility of evidence, the defendant's ability to cross-examine and the need to overcome presumption of innocence'.[22] In this respect, holding accountable wrongdoers for their actions against human rights not only restores the rule of law, it also opens the avenues to reconstruct distorted historical narratives of past events and bring the missing truth to light.

Criminal justice is thus closely intertwined with historical justice in a synergetic relationship. Trials, through due process of law, help transitional history to shape a particular account of a state's controversial past and rebuild the collective memory of one's nation. Through the recreation and dramatization of the criminal past, trial proceedings offer to victims of repression the opportunity to speak up

and establish a vivid representation of the collective history they lived. By bringing victims' voices into the public domain and officially condemning the old regime's abuses, law shapes an 'official' history of the past that holds perpetrators accountable and corrects the distortions in the historical narrative propagated by the totalitarian regime. As Teitel puts it, 'while military or political collapse may well succeed in bringing down repressive leadership, unless the repressive regime is not only defeated but also publicly discredited, its political ideology may well endure'.[23] This is what renders transitional justice both a backward-looking and forward-looking enterprise.

In addition to juridical measures, historical truth and memory commissions are a core component of transitional justice mechanisms. To meet the challenges of reckoning with past atrocities, a society should investigate, establish, and publicly disseminate the truth about them.[24] Truth commissions have been the most common mechanism to find and establish the truths repressed, denied, and hidden by the totalising narratives of dictatorial regimes. Transitional justice through truth commissions aims to reach multiple goals, such as finding and establishing these truths, facilitating reconciliation through public hearings and societal catharsis, as well advancing justice by forwarding case files to prosecutors. Finding out the truth, identifying the perpetrators, and punishing them or compelling them to publicly admit their crimes can facilitate justice by ending impunity. Furthermore, by revealing the truth about past crimes, victims and survivors can begin to heal from trauma.[25]

Truth commissions are considered to play a particularly important role in the remaking of history in times of political and societal flux. For instance, Martha Minow has argued that a central task of truth commissions is to write the history of what happened, and that a truth commission may be a more effective mechanism than litigation for devising a new national narrative.[26] Although certain truths may already be widely known, they are often denied. Truth commissions—through investigations, public hearings and report compiling—can reconstruct the official historical account of the past. This can officially acknowledge and restore truths that, under the regime, were unsettled, distorted or disputed.

This mechanism thus has a double value: it establishes factual knowledge and sanctions official truth.[27] While this at first appears to be a primarily backward-looking function, truth commissions are in fact an essential forward-looking mechanism as they look to the past, not for its own sake, but in order to clear the way for a new beginning. By rewriting and reinterpreting the historical record, truth commissions educate future generations. Transitional justice inquiry is therefore important in determining the direction of transition in that it establishes and disseminates the factual record of past horrors with the aim of ensuring that such atrocities will not occur again.[28] A collective memory that reflects and holds society accountable for the wrongdoings of the past is the best guarantee that past wrongs will be corrected, not be repeated.

Another transitional justice measure widely used, especially in Central and Eastern Europe after the fall of communist regimes, is lustration. This falls under the so-called administrative measures which aim to break with the past by screening, removing or preventing from entering public office persons who have committed serious human rights abuses during authoritarian rule. Lustration is considered a crucial measure in rebuilding citizens' trust in government and other public institutions as well as promoting democracy in the aftermath of totalitarian rule.[29] Most of the former communist countries in Central and Eastern Europe introduced lustration at various times and in different degrees in the process of dealing with their communist pasts. However, as Horne argues, lustration's ability to contribute to consolidating democratic institutions and building trust in new public institutions is more interdependent with the scope and implementation of the mechanism rather than with the introduction of the legislation per se.[30] As we will see below, the discrepancy between formal legislation and implementation emerged as one of the primary pathologies of the transitional justice enterprise in Albania.

Lastly, the array of transitional justice mechanisms extends to softer practices such as reparatory measures, access to secret files, and the constructions of museums and memorials. This assemblage of mechanisms puts at its epicentre victims' needs in post-authoritarian, post-conflict societies and aims to restore their dignity and property and to

acknowledge their sufferings. For instance, reparations may include official state grants or monetary payments, property, or other forms of restitution of monetary value to victims, or the relatives of victims, of past human rights violations.[31] Opening previously secret files can restore to victims a sense of agency as they uncover buried truths about their oppression, and it allows ordinary citizens to contrast the information contained in the files with their own recollection of past events.[32] This decentres the 'truth' by giving an opportunity to victims and the wider public to go beyond truth commissions' official reports and establish a more nuanced, intelligible truth for all. Finally, though transitional justice literature has overlooked the symbolic dimension of museums and memorials in addressing the criminal legacy of authoritarian regimes, scholars such as Light and Young acknowledge the crucial role these institutions can play in bringing to light repressed truths and healing the wounds of the communist past.[33]

In sum, this assemblage of mechanisms makes transitional justice a backward and forward-looking enterprise with transformative powers in societies emerging from mass atrocities or authoritarian rule. In part, transitional justice practices have the potential to facilitate the reconstruction of the collective historical account of the past in light of the present.[34] As we will see, grappling with the past is not an easy enterprise. Context, timing, politics of the past and the present, and the dynamics of transition all play a crucial role in meeting transitional justice's ends.[35] In Albania, all of these variables have worked against transitional justice practices and inquiry. As a result, Albanians have had unsatisfactory outcomes with regard to reconstructing the collective memory of the communist past and promoting democracy.

Grappling with the Communist Past in Albania

On the eve of regime change in the late 1990s, Albania had one of the harshest communist regimes in Central and Eastern Europe. The majority of its citizens were subject to state surveillance and draconian punishment practices, and the regime had built a particularly repressive security apparatus which oppressed all forms of dissidence, expropriated individuals, and interned or sentenced to death or life in prison

tens of thousands of people that disagreed with its policies. Indeed, the Communist leadership of Enver Hoxha has been described as the most repressive regime in Central and Eastern Europe, and one of the most tightly closed societies in the world. Its policy towards social and cultural customs was the harshest of all, and it was the only regime in the world that banned religious practice altogether.[36] The unprecedented scope and severity of the communist repression against human rights would make one argue that Albania had strong reasons to undertake ambitious transitional justice measures and thus draw a strong line dividing its hoped-for democratic future from its brutal communist past. These historical and political factors argue for a sweeping and radical model of transitional justice.[37]

In fact, in the beginning of the 1990s Albania undertook a seemingly ambitious combination of transitional justice measures, including amnesty, public administration purges, lustration, and criminal trials. Based on these institutional efforts, Gjoci identifies four periods that dealt, in different ways, with the communist past in Albania: the early post-communist period of 1991-1996; the forgetting and ignoring of the past 1997–2004; the past resurfaced 2004–2014; and the public debates of 2015 to the present.[38] Despite the surface appearance of dealing with the past at some moments, the measures taken were ill-framed and politicised. They lacked cross-party consensus, and their implementation was significantly hindered by the communist political legacy. As a result, transitional justice measures in post-communist Albania were unable to seriously and sincerely address the communist regime's human rights violations. Instead, Albania has gone the way Teitel predicted for post-totalitarian societies that fail to publicly discredit the old regime: the political ideology of Enver Hoxha's brutal dictatorship endures. It is not just the regime's victims that suffer from this: the whole of society suffers from the enduring communist mindset that has left hopes for democracy shattered.

Failing Transitional Justice

On 31 March 1991, after 45 years of one-party-rule, Albania held its first multiparty elections which gave birth to the first pluralist parliament. This officially marked the

beginning of Albania's transition to democracy. In September 1991, the parliament passed Law No. 7514 'For the Innocence, Amnesty and Rehabilitation of Former Convicts and Politically Persecuted', which acquitted all persons who were accused, tried, sentenced and imprisoned, interned or persecuted for violations of a political nature during the 45 years of the regime.[39] In this regard, amnesty was the first transitional justice measure to be implemented while the communist elite were still in power. As Gjoci argues, the regime used amnesty as a tool to escape the Romanian-like bloody anti-communist revolution and to secure a peaceful transition from dictatorship to democracy.[40] This use of 'amnesty', however, appropriates and perverts amnesty as a tool of transitional justice. Typically, it is perpetrators who are granted amnesty from prosecution in return for telling the truth about human rights crimes they have committed or participated in, or for giving information that helps investigators uncover crimes or victims to heal from crimes. 'Amnesty' granted to victims of human rights crime is a perversion that lets the perpetrator seem magnanimous while concealing human rights crimes behind this cloak of magnanimity.

While the political class changing coats from communist to democrat appropriated the concept of amnesty, they subsequently appeared to apply more stringent measures, such as large-scale indiscriminate cleansing of the administration of communist-era personalities. In 1993, the government adopted the first de-communisation law targeting lawyers who were part of the previous regime's institutions (Elbasani and Lipinski, 2011).[41] Yet some argue that these measures were politically motivated rather than a sincere attempt to address the criminal past of the communist regime. González-Enríquez goes so far as to argue that the newly formed Democratic Party used 'this provision ... to undertake a wide-ranging purge and replace former employees with PDSH (Democratic Party of Albania) supporters'.[42] Nonetheless, one could argue that these measures aimed to restore citizen's trust in public institutions which is fundamental to establishing democracy in a post-authoritarian country.[43]

In the mid-1990s, while the new political elite was establishing its ground, Albania introduced criminal trials to reckon with the criminal legacy of the communist

regime. Several criminal proceedings were initiated to hold accountable leading communist figures, but, interestingly, they were initially charged for misuse of office and economic crimes instead of human rights abuses. It soon became 'clear that the communists were to be held to account, not for their political actions but instead for economic crimes'.[44] The reluctance of Albania to take stronger and swifter formal and informal actions against wrongdoers seems to have compromised transitional justice from the beginning. As Elbasani and Lipinski argue, 'the judgment of a couple of former communist leaders on economic charges, seemed to overshadow the real abuses of the uniquely totalitarian communist regime and blur the goals of ensuring justice for the real crimes committed in the past'.[45]

Nevertheless, in 1995 Albania took robust transitional justice measures by passing two laws in parliament, the so-called 'Genocide Law' and 'Verification Law'. This was a comprehensive de-communisation package which addressed Albania's need to bring to justice perpetrators, reveal truth and mark a clear break with the past. The 'Genocide Law' stipulated that 'crimes against humanity' committed under the communist regime were to be prosecuted under the criminal code and those convicted could not be elected to certain categories of office until 2002.[46] It thus could be considered as one of the most serious attempts to deal with the criminal past of Albania's totalitarian rule. A number of senior politburo members were indicted for genocide and crimes against humanity, including Ramiz Alia, the last communist leader. However, most of them did not stay in jail for long as they either escaped after the outbreak of riots in 1997 or were acquitted later on by the Supreme Court in 1999.[47]

Despite aspects of the formation, passage, and implementation of the 'Genocide Law' that were sincere attempts to face and deal with the communist past, it was ill-framed and politicised and thus could not bring about the desired effects in addressing the human rights abuses of the communist regime. Abdurrahami argues that one reason the law did not have its desired legal impact is that genocide and crimes against humanity were already indictable offences under the new penal code.[48] This reduced its legal scope and thus rendered it legally non-applicable. Genc Ruli, one of

the key figures of the ruling Democratic Party, the first anti-communist party in Albania, admitted that the 'Genocide Law' showed the 'political immaturity of the Democratic Party', implying that it was not framed adequately and therefore did not bring the desired justice.[49] In addition, Austin and Ellison argue that lustration under the 'Genocide Law' was limited as former communist officials would only have been banned from public office provided they were first convicted by the general prosecutor as the authors, conspirators, or executors of a crime against humanity.[50] Furthermore, as it was seen as politically motivated by the Democratic Party (to show that it intended to enact its anti-communist promises), the law did not incite cross-party consensus.[51]

In the last instance, implementation of the 'Genocide Law' was hindered by the communist legacy. For instance, in 1997 the self-proclaimed reformed Socialist Party, the direct successor of the Albanian Communist Party, came to power. Unsurprisingly, the SP majority reduced the scope of the 'Genocide Law' and, in due course, it was rolled back by the Constitutional Court, and the Supreme Court acquitted all those accused.[52] In this regard, it seems that the politics of the present and the country's communist legacy played a significant role in hampering the effects of the 'Genocide Law'. This is an example of how legacies maintain an enduring grip on culture. As Pop-Eleches explains, 'legacies are defined as the structural, cultural, and institutional starting points of ex-communist countries at the outset of the transition'.[53] The most concrete manifestation of the legacies of the dictatorship in Albania are people: the former communist regime functionaries inhabiting rebranded post-communist political parties and other 'independent' institutions did everything possible to impede transitional justice measures.

The 'Verification Law', on the other hand, was seen as a good step forward in handling Albania's communist past as it provided the legal instruments to screen and ban from office a wide range of former communist officials. It provided for the screening of potential and actual members of the government, police, judiciary, educational system, and media in order to determine affiliations with communist era government organs or state police.[54] The law created a Verification Commission in 1995, the so-called Mezini Commission, with exclusive

rights over the secret police files. If public officials were found guilty through its screening process, government institutions could remove them from office until the expiration of the law in 2001.[55]

However, similar to the 'Genocide Law', the 'Verification Law' was perceived as a political weapon in the hands of the ruling party to cleanse its opponents from power and eliminate competition. Elbasani and Lipinski contend that provisions enabled the ruling party to maintain political control over the process by appointing the majority of the Parliamentary Committee. In addition, some of the provisions were vague, and all party leaders were automatically excluded from the verification process, thus casting doubts on political impartiality in its implementation.[56] Many people with questionable communist pasts likely escaped scrutiny due to their political allegiance.[57] Moreover, the Mezini Commission's credibility was seriously undermined, which in turn impeded its efficacy in cleansing public administration and high ranking positions of members and collaborators of the former totalitarian regime's security apparatus. The law also sealed the secret files from public disclosure until 2025, which seriously damaged possibilities for transitional justice processes to investigate and reveal truths about the communist past. To make matters worse, after the Democratic Party lost power in 1997, the Socialist Party (SP)—the successor of the Labour Party and packed with former communist regime functionaries—reduced the scope of the 'Verification Law' to include only members of the Politburo, former agents of the secret police or foreign intelligence agencies, and individuals convicted for crimes against humanity.[58]

Hence, lustration became a victim of the former regime's political and bureaucratic legacy and the structures of power that they created. As Welsh argues, totalitarian legacies shape the current circumstances of politics and public administration and thus play a fundamental role in whether or not and how transitional justice practices in times of political flux play out. 'Even in countries where the former communist forces initially suffered a severe defeat, reconstituted but substantially different—both in ideology and structure—successor organisations have been able to stage a comeback'.[59] This has proven especially true in some Central and Eastern

European countries, where the 'reformed' communist elite inherited a significant leverage within public administration, the judiciary, and political parties; this enabled them to resume power very quickly. For example, after 1997, the SP majority in Albania amended the 'Verification Law' several times to reduce its scope. Working in secret, the parliamentary committee in 2000 declared that 'the new administration was 'clean' of any communist collaborators while the law itself was not exercised again'.[60] Protecting yesterday's perpetrators and returning them to power today is not unique to Albania; the constitutional courts in Bulgaria and Hungary have played similarly important roles in defining the limits of retributive justice and have generally acted as restraining forces.[61] As Balas notes (referring to the SP, the successor of the Albanian Labour Party), 'obviously, a political entity transformed from former communists was not particularly eager to see the lustration legislation efficiently applied'.[62] In 2001 the lustration law expired and lost its judicial effects, thereby leaving un-touched the historical account of the communist regime and further impeding any potential success transitional justice measures may have had.

In 2008, the country again began to look at dealing with the communist past when the parliament passed the Lustration Act No. 10034, which required the lustration of members of the executive, legislative, and judicial branches.[63] Its provisions elicited heated debates within Albanian society and attracted criticism from international organisations. They were particularly concerned with its partisan character and the constitutional law's compliance with international convention.[64] Balas, however, argues that the lustration legislation was feasible and that it violated nothing in Albania's international commitments and constitutional framework.[65] At the same time, he recognizes that the bill was harsh, ill-framed and ill-considered, which in turn damaged Albania's outlooks of adopting lustration legislation that would benefit the whole country.[66] The bill mobilised the opposition, who filed complaints to the Constitutional Court on the grounds that the law was unconstitutional.[67] In 2009 it was suspended by the Constitutional Court and was forwarded for review to the Venice Commission,[68] making it one of the most short-lived transitional justice measures in post-communist Albania's

history. Once again, the legacies of the communist past thwarted attempts to institute transitional justice measures, leaving Albania one of the few countries in South and Central Eastern Europe where neither formal nor informal lustration took place. Horne laments Albania's plight as 'a country that had lustration laws on the books, but failed to implement them', thus eschewing 'even informal attempts at screening, lustration, and public disclosures'.[69]

Lastly, the *Sigurimi* (secret police) files have remained largely closed, which has hampered attempts to uncover the truth and protected the communist regime's perpetrators from exposure to the public. The Institute for the Studies of the Communist Crimes and its Consequences, established in 2010, is allowed to read files, but it is prohibited from disclosing them to the public. Not surprisingly, its work has been seriously impeded by public political attacks, including the SP Majority proposing a ban on the study of communist crimes committed during WW II.[70] Similarly, while the 1995 Bezhani Commission was created to disclose dossiers of high-ranking members of the past administration and to prevent them holding elected offices during the democratic transition, it was highly contested and sabotaged from its inception.[71] Albania has thus completely failed to establish a functioning and effective truth commission to bring to light the truth of state crime in the past and so make a clean break that allows democracy to advance in the present.

In 2015—twenty-five years after transition—Albania finally managed to pass legislation establishing the Authority for Information on Former State Security Documents (AIDSSH). However, its scope was narrowly defined and its activity has met public scepticism.[72] As Kozara Kati, one of Albania's leading human rights activists, argues, 'opening of the secret files is delayed while during the political transition some of them have been manipulated'.[73] For example, by official order, the secret service files for all the Communist Party members were systematically destroyed beginning in July 1990, followed shortly thereafter by destroying the files of secret service collaborators in September 1990.[74] Given that so many files have been destroyed and that interested parties have had two and a half decades to manipulate the information that remains, there is no guarantee that access

to the files will substantially advance efforts to uncover the truth of state crime under communism. Indeed, as Gjoci maintains, 'the opening of files is not being used to uncover how crimes were committed; instead the files are contributing to a culture of manipulation of people and creating false heroes, just like during the communist regime'.[75] After three decades now, it seems that file disclosure does not serve the purposes of revealing the truth, both as information is not considered reliable and because of the significant delay in making the files publicly available. In this case, then, it is the timing that negatively impacts this transitional justice measure and precludes the possibility of seriously addressing the communist past in Albania.

As we see then, although Albania undertook some transitional justice measures, it failed to implement transitional justice in its substance. The measures have been dispersed over long periods of time, and every time efforts were made to deal with the past there soon emerged a huge discrepancy between formal provisions and implementation. In addition, some measures were reduced in scope and either abrogated by the Constitutional Court or left to expire in due course, thus rendering transitional justice a futile enterprise. The country's entrenched communist legacy, the old power structures that continue today under new names, and the poorly designed and deeply politicised steps that were taken have left transitional justice in Albania hijacked by a combination of the politics of the past and the politics of the present. Albania's failure to substantially deal with its communist past has long-term and debilitating consequences for the country's collective memory building, which has in turn prevented Albania from establishing a genuine democratic system.

Implications for Collective Memory Building and Democracy Promotion

Jan Assmann, in his essay 'Collective Memory and Cultural Identity', distinguishes two types of collective memory, communicative memory and cultural memory. Communicative memory is characterised by its proximity to the everyday, and cultural memory is characterised by its

distance from the everyday.[76] I am particularly concerned with cultural memory, which is fixed in time and encompasses texts, rituals, symbols, monuments and discourses through which a society shapes and stabilises its identity.[77] Cultural memory does not change with the passing of time because it is deeply embedded in the social realm.[78] However, transitions are times of political and social flux and therefore the often-shared frameworks—political, religious, social—are threatened; in these times of flux, it is the law, its framework, and processes that in great part shape collective memory.[79] Therefore, if we take cultural memory as a point of departure in our discourse reconstructing the past, we risk reproducing the biased and totalising historical narrative of the *ancien régime* because, as Teitel points out, 'every regime has its official truth, the types of discourse which it accepts and makes function as true'.[80]

Thus for the purpose of this paper, I will use Teitel's understanding of collective memory building as the process of reconstructing the representation of the past in light of the present through varying legal measures, such as the trials of the *ancien régime*, or bureaucratic bodies convened for these purposes, and still other legal responses that imply marshalling a factual predicate.[81] In this regard law, which establishes facts about the past in light of the present, can play a crucial role during transitions in shaping collective historical accounts. For instance, constructing past state action as illegitimate requires reporting facts in ways that highlight the differences between condemned past acts and the social norms of a just society.[82] Facts about state crime and human rights abuses brought to light by transitional justice practices facilitate the creation of a counter narrative to the totalising one of the regime and, in turn, establish a shared collective truth of the past state's wrongs. Albania's failure to deal with its totalitarian past has prevented the uncovering of the past state's human rights abuses and left the old regime's perverted narrative untouched; this has undermined possibilities to establish a shared understanding and memory of its totalitarian past, which in turn has dragged down the democratic prospect of the country.

Hindering the Making of a Shared Memory of the Communist Past

If you take a look at school textbooks in Albania, it is troubling to note that the dark side of the communist past is entirely absent. Instead, according to Dr. Anna Kaminsky, head of the Federal Foundation for the Communist Legacy in Germany, school textbooks continue to depict the Albanian communist past as a glorious period that brought big reforms in education, electrification, and women's emancipation. The substantial role of state violence and the many victims of the regime are simply ignored.[83] This has left the totalising narrative of a repressive regime untouched. Even worse, it allows that narrative to continue manipulating public beliefs. This has had pernicious effects across the entire culture. As a case in point, Jonila Godole, the head of the Institute for Democracy, Media and Culture, found that, in a recent survey, more than 60 percent of public school teachers were not aware of the number of victims of the communist regime because the country's criminal past is not reflected in school curricula.[84] This is a prime example of how, in the absence of truth and justice mechanisms, the narratives that totalitarian regimes use to legitimate state crime become integrated into social institutions that act as collective memory archives.[85]

Post-communist Albania's negligence in dealing with the communist state's human rights violations has left the young generation who did not live under the communist dictatorship without a clear point of reference for understanding the past. As Ignatieff argues, public education in every post-conflict or post-authoritarian rule is important in order 'to reduce the number of lies that can be circulated unchallenged in the public discourse'.[86] In the absence of an official history regarding the communist regime's abuses, the only information available to youth comes from family members, media and communist period films produced by Kinostudio e Re (the communist state-owned film production agency) which was part and parcel of state propaganda.[87] This has left the youth with a confusing and conflicting hodgepodge of (mis)information about the communist period, which in turn further makes it more difficult for the culture to acknowledge victims' sufferings and reconstruct a shared understanding about the communist regime's wrong-doing. Indeed, in this context,

many youth dispute or outright deny that the communist state committed human rights abuses. This remains an ongoing source of social polarization and further inhibits Albania's ability to build a functioning democracy.

The recent divisive debate about the concentration camp of Tepelena illustrates how failing to bring perpetrators to justice and establish a shared truth regarding Albania's communist legacy of human rights abuses harms society. In Tepelena, a small, isolated southern city of Albania, the totalitarian regime built a concentration camp where hundreds of thousands of people, including children and the elderly, were interned from 1949 to 1953; it is estimated that roughly 1000 people lost their lives due to physical torture and malnutrition.[88] However, many downplayed these wrongdoings on the grounds that conditions in the Tepelena camp were not that bad, thus relativizing the criminal legacy of the past regime.[89] As Albanian historian Enriketa Pandelejemoni argues, this is a prime case in which elites that served the official history of the old regime were able to deny, manipulate, and distort the history precisely because Albania has failed to compile a full historical record of the past.[90] Official documents from the camp can tell only a partial story. To construct a full historical account, oral histories, victims' and eyewitnesses' memories, and a range of informal historical documents (journals, diaries, letters, etc.) are necessary. The fact that Albania has never held perpetrators accountable or established an official record of state crime thus led to arguments over how to historically interpret the Tepelenë camp.[91]

Albania's inability to implement full-fledged transitional justice measures has thus perpetuated and amplified social polarisation and fragmentation. The extent to which the dictatorship's ideology remains pervasive and unquestioned in society is illustrated in a survey conducted by the Organization for Security and Co-operation in Europe (OSCE) Presence in Tirana on 'citizens' understanding and perceptions of the communist past in Albania and expectations for the future'. Data revealed that 62 percent of the respondents did not see the communist past as a problem. However, the most controversial figure was that, when asked about the role of the former dictator, Enver Hoxha, in the history of the country,

more than half of the respondents had a positive perception.[92] As shocking as this is, it becomes comprehensible when we remember that half of the population was born either just before or after transition; with no serious decommunization efforts,[93] no factual record of the period publicly available, no school textbooks, half-hearted and failed transitional justice measures and thus no shared understanding of the past, political and social cleavages have exacerbated and hardened. Albania is thus in what Etkind calls the post-catastrophic world. As he says, if we fail to achieve justice for those wronged, to fully understand the nature of what happened—if we fail to mourn for the collective suffering of the nation, we enter into a period of post-catastrophe. In the post-catastrophic world, 'the past haunts the citizenry, divides the society and limits political choice'.[94]

Straining the Democratic Prospect

Collective history making of the repressive past is said to lay the necessary basis for political consensus and a new democratic order. Indeed, as Teitel argues, 'historical consensus is tightly linked to building political consensus'.[95] To the extent that transitional justice inquiry through public processes can deconstruct the *ancien régime's* totalising narrative, it can help to generate 'a democratising truth that helps construct a sense of societal consensus'.[96] It is thus widely believed that historical accountability determines transition's dynamic; far from being 'stuck in the past', transitional justice and historical accountability are transformative and play a forward-looking role in a country's liberalisation process. No viable democracy can afford to accept amnesia, forgetfulness, and the loss of memory. As Linz and Stepan argue, 'an authentic democratic community cannot be built on the denial of past crimes, abuses, and atrocities'.[97] In this sense, holding individuals accountable for crimes committed under the previous regime lays the foundation for a democracy committed to the rule of law and prevents future abuses under the new system.[98] Thus, transitional justice is envisioned as a way to create a new foundation for state and societal rebuilding by making a break with the past and setting the directionality of transition.

There is no common scholarly definition of what constitutes a consolidated democracy. For the purpose of this paper, I will use Linz and Stepan's definition of a consolidated democracy as 'the political situation when democracy becomes the only game in town'.[99] Democracy is far from 'the only game in town' in Albania, where the failure to bring to justice wrongdoers of the communist regime has nurtured the old elite and allowed them to continue to hold power; their abuses of power have constantly plunged the country into deep political crisis and undermined its democratic prospects. Indeed, as Krasniqi points out, 'the new system continued to function as an appendix of the old system, and the main bearers of this were political parties and the institutions they created'.[100] In fact, the inability of Albania to come to terms with the past and construct a shared narrative concerning its communist legacy has become a fertile ground for political polarisation and the emergence of the politics of anti-politics. The political discourse is not framed around politics, by which Chantal Mouffe understands 'the wide range of practices, discourses and institutions which aim to establish a peaceful co-existence of different conceptions over what constitutes a good or moral life'.[101] To the contrary, the unsettled historical account of the communist past is misused to construct a divisive political narrative between two antagonistic camps, the anti-communists and the successors of the communists, both of whom use Albanian citizens as munitions in their battle for electoral power.[102] This has not served the needs of citizens and democracy building, but rather has hardened political polarisation. Albania is proving Mouffe's argument that, if a political unit cannot transform antagonism into agonism, it risks tearing apart the very social fabric of the society and dismantling democracy in the first place. Moreover, by reducing all political discourse to the threat of 'Communism' or 'Berishizëm', (the latter referring to the former DP leader and anti-communist symbol Sali Berisha, who became a main political player in Albania from 1991 to 2013), all other social concerns are ignored and political alternatives subsumed, which in turn perverts democratic representation and political choice.[103]

Albania's inability to address its communist legacy perverts democratic representation and political choice by

continuing to undermine trust in democratic practices and public institutions—a trust which was devastated under Enver Hoxha's communist dictatorship. Hoxha's policies 'undermined both interpersonal and institutional trust, leaving Albania with a troubling legacy that remains to this day'.[104] This is evidenced in the most worrisome issue in post-communist Albania, its inability to hold free and fair elections. The electoral processes have been largely characterised by irregularities and a winner-takes-all approach to governing.[105] Therefore election results have been constantly disputed, which has plunged the country into persistent political gridlocks and thus kept democracy at arm's length. As Bajrovic and Satter assert, 'decades of repression under one of the twentieth century's harshest and most idiosyncratic regimes may have created formidable obstacles to democratization'.[106] Similarly, Kalemaj and Jano argue that the authoritarian political culture of the Albanian political elite has distorted the democratic institutions to such an extent that Albania cannot be considered a consolidated democracy.[107]

Intra-institutional distrust is resonant with the bottom-up distrust towards public institutions. A recent survey conducted by the Institute for Democracy and Mediation shows a constant decline in the public's trust in public institutions, particularly in political parties.[108] The latter are perceived as corrupt and usurped by members of the former communist nomenklatura. They have misused power at the expense of good governance and rule of law, thus rendering Albania a captured state.[109] This is so extreme that Primatarova and Deimel warn that 'Albania has experienced a shift to almost complete control by the ruling elite and extensive use of non-democratic proceduralism where laws and institutions are used for exerting control by elites in power'.[110] Indeed, throughout its transition Albania's consistently low scores on measures of democratic governance, rule of law and corruption position it as a stabilitocratic regime rather than a genuine democracy.[111]

These failures, coupled with Albania's economic stagnation in recent years and EU integration stalemate, have nurtured popular disillusionment towards the much-proclaimed benefits of a democratic system. This disillusionment is so severe that, as post-communist Albania

struggles to make progress and deliver tangible results for its population, a great many people have begun to feel nostalgic for the past. This mass dissatisfaction has been politically harnessed by communist-era politicians and the *ancien régime's* political successors to cling to power and obstruct Albania's path towards a functioning democracy. As a result, three decades after the fall of the communist regime, the end of democratic transition in Albania is yet to come. The 2020 Freedom House report defines Albanian as a partly free country and a hybrid democracy, while in the same vein Transparency International ranks Albania as a highly corrupt country.[112] What is more troubling is the fact that Albania is persistently backsliding as far as democratic practices are concerned.[113] This indicates that its already prolonged transition to a full-fledged democracy will continue as a never-ending endeavour, largely due to its political immaturity and lack of political consensus[114]—both of which are exacerbated by the failure to adequately face its communist past. This intermingling of the politics of the past with the politics of the present continues to undermine the nascent Albanian democracy by perverting democratic practices and preventing co-existence.

Conclusions

Although Albania undertook seemingly ambitious transitional justice measures, the measures taken were by and large half-hearted, ill-informed, politicised, and unable to produce any tangible outcome in reckoning with its communist past. A number of factors contributed to the failure of transitional justice mechanisms in post-communist Albania, such as the influence of communist-era political elites and institutional leverage over the directionality of transition. This did not yield cross-party support, which in turn undermined the credibility and efficacy of legislation. Some of the measures introduced were so poorly framed that they were rendered legally null. Lastly, the communist regime's political legacy seems to have played a significant role in impeding the transitional justice enterprise. The segment of the political elite who, overnight, changed from communists to 'reformists'—and who significantly controlled post-communist Albania's political parties—were not particularly eager to see transitional justice legislation efficiently applied. They became a stumbling

block in Albania's attempt to deal with its communist criminal legacy. In this regard, one could hardly say that Albania made a clear break with its totalitarian past.

This has in turn produced grave consequences for collective memory building about the wrongs of Albania's communist past and the directionality of transition and prospects for democratisation. Albania is far from having a shared collective understanding of its communist past. The failure of transitional justice mechanisms has undermined both the ability to uncover the truth of state crime and to establish the facts of the communist regime's human rights abuses. This means that the totalising narrative of the communist dictatorship rule has been left largely unchallenged and continues to distort collective memory with propaganda about the glorious past; this relativizes and frequently outright denies the reality of the regime's crimes, leaves the public uninformed, confused, and subsequently polarised about the communist past.

On the other hand, this paper's findings indicate that there is a causal correlation between collective reflection upon the state's past abuses and democracy promotion. Albania continues to float in the post-catastrophic period, where the inability to mourn the victims of the communist regime, the failure to build a shared memory regarding the wrongdoings of totalitarian rule, and to hold perpetrators accountable for human rights abuses, is limiting political choice, straining the political process, deforming democratic practices, and ultimately extending transition. Thus, Albania's democratic prospect is held hostage by the ghosts of its communist past which are haunting the present and the future. Knowing is liberating, while reflecting on the past is unifying and transforming. Three decades after the fall of the communist dictatorship, Albania has achieved neither the former nor the latter.

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Chapter 11

Thirty Years of Economic Transition in Albania: From Shock Therapy (Just 'Shock') to Spontaneous Developments without a Long-Term and Clear Strategy

Fatmir Memaj

> Don't be afraid to take a big step if one is indicated.
> You can't cross a chasm in two small jumps.
> —David Lloyd George (1863-1945)

Abstract

In the thirty years since December 1991, Albania has travelled a long and difficult road to establish a functional democracy with free-market institutions. Regretfully, we note today that the journey has been plagued with serious obstacles which have left the country stagnant. If we have any hope of overcoming the many challenges facing us in the future, we must first take a look back in order to understand what went wrong. Coming out of fifty years of communist dictatorship, Albania's political and economic elite knew absolutely nothing about the theory or practice of 'free markets'. In lieu of an actual understanding of free markets or a solid theory to guide practice, Albania's elites consumed the ideas and advice offered by the vast array of international development workers

that flooded the country in the early 90s. All had an agenda to push, the 'answer' that would make Albanians prosperous and free. From this smorgasbord of advice Albania's elite gorged. The economy was quickly linked to political manoeuvring: the political elite curried favour with whichever international actor they believed could help them win elections at home. With market decisions a function of electoral campaigns and political interests, and no concrete long-term economic development strategy, Albania's transition has been a series of failed experiments conducted by an elite that, rather than 'reforming' the country, were in the position of learning as they were governing (which frequently translated to making things up as they went along). In order to break free of both the authoritarian mentality of communist dictatorship and the shackles of state capture by private interests, a new and more responsible political class will have to learn from the past. In the interests of this learning, this chapter reviews: the main economic indicators 1991–2021 and the significant economic challenges of transition, including privatization and issues emerging from land return and compensation; the pyramid scheme crisis; the establishment and challenges faced by regulatory and supervisory authorities; and current economic developments and reliance on Public-Private-Partnerships in the construction sector.

The beginnings of a long transition

In the thirty years since December 1991, Albania has travelled a long and difficult road to establish a functional democracy with free-market institutions. Regretfully, we note today that the journey has been plagued with serious obstacles which have left the country stagnant. If we have any hope of overcoming the many challenges facing us in the future, we must first take a look back in order to understand what went wrong. Most crucially, from the very beginning, Albania's political and economic elite had no experience with or way to understand the 'free market'. At the time of transition, Albanians were in a miserable economic situation—indeed, nearly one-third of the country was living at near starvation levels. Compared to the failed model of the planned economy, the model of Western 'development' promised a utopia. Radical poverty and the

belief that the Western model offered prosperity were strong incentives for Albanians to reject the communist past and embrace this new paradigm. But, coming out of fifty years of communist dictatorship, Albania's political and economic elite knew absolutely nothing about the theory or practice of 'free markets'. In tandem with the 'reformers' who had no understanding of the project upon which they were embarking, a handful of indoctrinated intellectuals continued to cling to the rubble of a failed system. Under these circumstances, Albania's transition has been a series of failed experiments conducted by an elite that, rather than 'reforming' the country, were in the position of learning as they were governing (which frequently translated to making things up as they went along). Instead of a capable elite conscious both of the reasons for and potential consequences of their actions, Albania has been led—with sometimes disastrous consequences—by people who often did understand that reforms were necessary, but who, prior to 1990, were forced to implement those reforms according to socialist ideology, and after 1991, had no other conceptual or ideological framework to guide them. Under these circumstances, economic 'reform' was doomed to fail, even with the best of people with the best of intentions.

We have to remember that it is not only the elite that had no concept of a 'free market'. Albania's economy was 100 percent centralized. One hundred percent. Under communism, the Albanian state nationalized all economic activities; constitutionally banned all private property and private economic activity; imposed monopolies over salaries, prices, exports, and imports; and had NO central bank nor any formal institutional mechanisms for borrowing or lending money or for financial speculation. Indeed, the combination of a 100 percent centralized economy and the lack of any of the financial infrastructures with which the rest of the world was already amassing fortunes cost Albania both strategic partners and access to world markets. There were costs to the people as well. In addition to the well-known dearth of goods available to Albanian citizens—including, all too frequently, food—Albanians endured hidden unemployment as well as forced unproductive employment, including upwards of an 80 percent salary subsidy to conceal high unemployment rates when the market lacked the primary commodities with which people worked.

Under these circumstances, the concept of a 'free market' was completely alien to the citizens as well as to the governing elite. This kind of communist mentality could never create an open capitalist society. During the last years of the totalitarian regime, the economic system was totally rotten but still on its feet thanks to the aggressive actions of the leaders, who, in my view, were more than convinced they were only prolonging the agony. Changes sweeping over Eastern Europe gave a huge blow to the country's economic system: foreign clearing trade was no longer working, and the purchase of primary commodities for the local industry and consumer products became extremely difficult, thus blocking many industrial state enterprises on the verge of bankruptcy.

In lieu of an actual understanding of free markets or a solid theory to guide practice, Albania's elites consumed the ideas and advice offered by the vast array of international development workers that flooded the country in the early 90s. The World Bank, the International Monetary Fund, the European Investment Bank, the EU and EC and every Embassy and its Ambassador—all had an agenda to push, the 'answer' that would make Albanians prosperous and free. From this smorgasbord of advice—often conflicting, incoherent—Albania's elite gorged. The economy was quickly linked to whichever flavour-of-the-day those in government were consuming: whose favour they wanted to curry, whose power they perceived would help them, which political faction from abroad could help them win elections at home. With market decisions a function of electoral campaigns and political interests, and no concrete long-term economic development strategy, even the economic growth curve and the economic crises of these past thirty years have had as much to do with politics as with economics.

Take, for example, the notorious policy and nefarious consequences of economic shock therapy. At the beginning of transition, there was discussion about gradually removing price controls, establishing a new financial system, and adopting radical new institutional and legal reforms that would open markets to competition. In the early 90s, debate centred around the strategy required to bring about these changes. One the one side, a conservative strategy advocated taking small and slow steps. On the other side, the infamous 'shock

therapy' demanded the rapid removal of all the restrictions imposed on free market development. I was among the few arguing for a more moderate middle-way; unfortunately, the middle-way had no purchase in those heavily polarized times.

Albania opted for 'shock therapy', which turned out to be a shock with no therapy.

Main Economic Indicators Marking the Beginning of Transition

The beginning of transition in 1990-1991 was both thrilling and uncertain. Many were thrilled about democracy finally coming to Albania and filled with expectations about the prosperity that 'development' would bring. There was also great uncertainly about what precisely one must do to usher in 'democracy' and 'prosperity' as well as about how the country could overcome the economic problems and social tensions dominating Albania. Among the critical economic problems was the fact that, at the beginning of the democratic process in 1991, the country's GDP had decreased by 30 percent compared to 1989, while inflation skyrocketed to 236 percent in 1992. The budget deficit also increased, escalating immediately from 0 percent during the communist regime to 30 percent, and then doubling again during the first three years of transition, to 60 percent of the GDP. These were strong signs of a huge uncertainty about the future. People were caught in the paradox of the dream of prosperity to which they clung and the reality of economic scarcity, uncertainty, and privation they were living. People expressed their anger and frustration with the broken promise of the prosperity to come with mocking expressions such as 'you vanished like olive oil' and 'the cabbage and the leek are the only ones not to cheat'.

Despite the outrages of shock therapy, the country was pushed to it by an impatience to achieve tangible results in the shortest time possible and the belief that radical political changes were necessary to address the country's economic situation. Shock therapy doctrine also disregarded significant internal drivers requiring a more gradual transition. In the domains of infrastructure and international relations, Albania had a preponderance of enterprises unable to quickly upgrade for the world market, while at the same time occupying a geographical position enabling it to reach out to new markets.

This, combined with the provision of cash assistance and economic specialist support from Europe and the USA, argued for a more gradual approach. As importantly, the change in ideological shift meant that the political class could no longer wage the class warfare on which the regime depended, both to maintain its power and in order to secure free labour via prisons, internment camps, and forced voluntary labour.

As shock therapy was imposed, many enterprises closed down. Multiple and complex factors determined which enterprises survived. On the one hand, outdated technology and limited managerial capacity, along with the loss of traditional markets, played a role in these closures. On the other, enterprises undergoing restructuring were purposefully selected to 'unburden' the state from non-visionary enterprises. In other words: many enterprises with well-conceived business plans which could have been made operational and should have been included were intentionally excluded from the restructuring scheme, while others were designated for restructuring based on political alliance and illicit gain. This premeditated action through which a small clique profited in unscrupulous ways discredited the process.

As troubling, though, is the corruption instituted at the very beginning of transition which exploited a pilot restructuring program that proposed to support enterprises with liquidity and commodities. After becoming fully efficient, these enterprises would then undergo privatization. This initiative allowed a more gradual economic transition than shock therapy, but was from its inception sabotaged by the power elite. The selection process intentionally chose enterprises most likely to fail, thus making the initiative itself appear to be a failure. The World Bank quickly acquiesced to the facade that the program was a failure and that the $30 million dollars invested in the project was money thrown away. Thenceforth, the political elite were able to pick and choose, without interference, which of the enterprises would close and which would survive.

As this example so painfully shows, the first failure of transition was the failure to break the link between politics and the economy, thus allowing the nepotistic relations established before 1990 to continue and flourish. The popular slogan 'there is no castle the communists cannot conquer' epitomizes this

problem. From its inception, transition has been plagued by: clientelistic policies; corruption and informality; statesmen who are controlled by financial strongmen (both domestic and foreign); suspicious privatizations that support favoured individuals and groups and thus deepen the inequality gap; and increasing unemployment. Additionally, unions were operating in the country that had no relation whatsoever to the protection of workers' rights, that were highly corrupt, and that frequently partnered with the government so as to get their share of the business from clientelistic and abusive policies.

Another key problem of early transition was the large-scale destruction of state infrastructure. In the first days of transition, people destroyed many enterprises. Farms and agricultural cooperatives were looted; merchandise, equipment, and building materials pilfered. Irrigation channels and agricultural facilities were destroyed; modern machinery in good working condition was stolen or sold for scrap; orchards were cut down or damaged. It was as though everything that had been built under communism was evil: as if the irrigation channels and orchards were fierce communists and must be destroyed!

To truly grasp the enormity of the situation Albanians faced in the first years of transition, consider the following macroeconomic indicators:

- From 1991 through the middle of 1992, all economic indicators spoke of a deep economic crisis: the GDP shrank, the budget deficit rose, inflation and external debt increased, and foreign exchange decreased.
- While the GDP decreased by 21.1 percent in 1991, the budget deficit stood at 44 percent of the GDP, external debt amounted to $500 million, or 30 percent of the GDP, and foreign exchange reserves were almost non-existent.[1]

By the end of 1992, following stringent budgetary measures, the first positive signs started to appear. Thus, in 1993, the budget deficit in Albania decreased to 16 percent of the GDP and in 1994 to 14 percent. Unemployment rates decreased, and inflation was reduced from 237 percent by the end of 1992 to 6 percent at the end of 1995. Additionally,

subsidies for public enterprises in relation to the GDP reduced from 16 percent to 2 percent during the 1992-1993 period. On the downside, the average salary in the country decreased by 26 percent, and the public sector shrank by one third.

In tandem with these serious failures, we should also recognize the positive contribution of efficient macroeconomic policies adopted in 1993 which helped to keep the inflation rate steady, increase general production, and improve payment balance.[2] Given its financial insolvency, Albania decided to shift to the floating exchange rate, as indicated by the circumstances of the time, which, in my view, was the right decision and an efficient policy to achieve the soonest possible macroeconomic stability. These policies also contributed to an increase in the GDP from the projected 3.7 percent to 11 percent. The most important of these reforms was the liberalization of prices and agricultural land privatization, which increased agricultural production by 14 percent.

As the years went by and the economy turned into a shark tank, people wearily accustomed themselves to the ferocity and toughness the free market demanded. In the meantime, political developments undermined the people's trust in a democratic system. During this time, academics and those in charge of economic policies were primarily concerned with the lack of knowledge about economic policies and the way that politics hijacked and distorted economic issues to gain power, take control of the country and its resources, and to influence decision making in every sector and at every level of the society. Among other things, we debated the appropriate time the reforms should have been implemented; the ratio between economic privatization and restructuring; stability and liberalization of prices; foreign trade; inflation rate and exchange rates; as well as what could be done to prevent the drastic decrease of production which continued after the 1990s. These were, in my view, some of the most difficult issues to resolve. At the beginning of the transition, people fell in love with democracy and the market economy, thinking that change would arrive soon—certainly, in less than 10 years! Early in the transition period, however, people began to understand where the country was headed. The shock was fierce, there was no accompanying therapy, and people had to brace themselves to survive another form of violence in

place of the freedom and democracy they were promised. The failures of these last 30 years will continue to significantly impede progress for many years to come.

Economic Development during the First Period after 1991

If we compare the 'winners' and the 'losers' of the transition period, we see that a small minority of 'winners' took advantage of and exploited the majority, i.e., the 'losers' who comprised a wide spectrum of social and professional groups. However, these periods always have their 'winners' and 'losers'. The 'winners' of this period remind me of Balzac's famous expression, 'behind every great fortune there is a crime'; the majority who were victims of these crimes, i.e., the 'losers', received not only a huge economic blow but also a social-psychological one—they lost trust in trust in democracy. Political factions, in the meanwhile, were fighting to get—or, more accurately, to keep for themselves—the profits they had made and were continuing to make. Justifications for crime, such as 'the IMF demands it', 'the WTO demands it', 'it's been settled by the World Bank', 'Europe or the USA demand it', etc., became so stale that the people started to mock them.

While shock therapy to get a free-market economy was sold to Albanians as the shortest and most efficient road to fixing the economic problems from the socialist system, it in fact turned out to be a long, hard road—a road Albanians were neither prepared for nor equipped to travel. As a case in point: I remember, at the beginning of the 90s, a foreign lecturer in an open lecture stating: 'Albania will need at least 25 years to get close to Europe'. The baffled audience grew distrustful of this foreign nay-sayer. Finally, the intellectuals began to see that Albania would need more than one generation to 'transition'. Soon, ordinary people began to understand this also. Today— 30 years later—I cannot help but to recall the statement of our European fellow. Time proved he was right, and there's still no light at the end of the tunnel.

We may be forgiven for our optimism, though, if we remember how economic reform started: with the agricultural sector reform, during which agricultural cooperatives and enterprises were distributed to villagers. This inverted the 1945 agrarian reform: then, the state stripped the people of their land. This time, reform stripped ownership from the state.

The reform primarily benefited agricultural households, who were granted 1.3 hectares per household. However, the land surface area was distributed over not less than 4-5 small-sized parcels, at a distance from each other, which made it difficult for individuals working in isolation to buy farm machinery or modernize agricultural production. Nevertheless, land distribution was initially praised as a milestone, mainly because it seemed to bring about the immediate and rapid development of the agricultural sector and considerably contribute to economic growth and employment.

The first positive results appeared between 1993-1995. Overall economic growth in 1993 was 9.6 percent and in 1995 was 13.4 percent. Correspondingly, agriculture increased to 18.5 percent in 1992 and 13.2 percent in 1995. Given that, in all times and all systems, agriculture is one of the basic sectors for a country's economic development, it makes sense to correlate the economic growth in the agricultural sector with the country's overall economic growth. However, this growth is determined in comparison to 1990; as it is not possible to calculate a growth metric between economic systems, this statistic does not measure actual growth within the newly imposed free market system or as a result of land redistribution.

Indeed, time proved that land reform was far more problematic than initially thought. In the first place, land distribution to villagers was deeply fragmented, leaving some farmers with multiple land parcels, while others to whom land had been allocated had fled the country, leaving plots of land with nobody farming them. Secondly, legal contests arose over the rights of people expropriated under communism to recover lands expropriated from them. Thousands of people have been in court for over two decades now trying to reclaim legal title to their lands. The problems of how property was arbitrarily distributed and of former landowners' pending legal claims have been continuously passed down as an unresolved burden to succeeding governments, as has the populist notion that every family should have its plot of land. Both have led to a greater fragmentation of the land and made agricultural mechanization even more difficult.

In addition to reforms in the agricultural sector, the primary economic and financial reforms 1991–1995[3] were:

- The monetary policy reform and the establishment of the new two-tier banking system;[4]
- Rigorous budgetary policies;[5]
- The establishment of a new tax and customs systems;[6]
- Attempts to keep inflation under control;[7]
- The establishment of the stock market;[8]
- Support for free entrepreneurship;[9]
- Policies for boosting agricultural and industrial production.

Despite the fact that this hodgepodge of steps were taken in a zig-zag, without a concrete plan and lacking coherence, they were blessed by the IMF and other international partners.

Privatization and Issues Emerging from Land Return and Compensation

Privatization has been and continues to be one of the most hotly debated issues in the country, with economic researchers holding different positions. Privatization began by giving or selling off shops and service units to the employees and salespersons who worked in them. The reasoning was that, having worked in these businesses, the employees had sufficient knowledge to continue running the shops. This was in my view a bad decision. The majority of salespersons obtained their businesses for free, and then, within a short period of time, either rented them out or resold them. The assumption was that the recipients of these small enterprises had the capacity to run them as businesses, but in fact they did not have the knowledge they were assumed to have. There were also extreme cases of price gouging in the subsequent sales of these businesses. In one such case, a service unit in the heart of Tirana was bought for 20-30 thousand leke and sold for 5.000-10.000 USD (more than 100 time greater than the purchase value in in the privatization process).[10] It would in my opinion have been much more feasible to first rent these SMEs out and so lay the groundwork for privatizing them after the people developed a business sensibility and the country developed an infrastructure for doing business. Alternatively, the businesses could have been purchased through instalments, indexed against real market prices (in lieu of a bank loan, given that the country still lacked a formal

banking system or the appropriate legislation for lending money).

Despite the many problems associated with the privatization of small and medium enterprises, this reform has generally been considered a success. The privatization of SMEs laid the foundation for the development of new enterprises and, in several cases, reactivated the traditional industries and, along with a boost from new domestic and foreign investment, spurred private sector development in local industry. However, despite its overall positive economic impact, the privatization process for SMEs was clientelistic and set the ground for corrupt practices and political activists to profiteer. For example, boards composed of members loyal to the government and State Intelligence Service oversaw the process, unfairly advantaging a small clique of preferred entrepreneurs and excluding the rest. Further, beneficiaries of the privatization process were later required to pay a ransom of sorts by formally and informally funding electoral campaigns. The problems besetting privatization did not escape the notice of domestic and international researchers, who evaluated the reform as overextended and flawed. Lags in bank privatization, for example, led to banks having to restructure multiple times. The banking system has hence been one of the costliest operations for the state budget and Albanian taxpayers.

The first phase of privatization 1991–1997 focused on land, shops, service units, and SMEs. The second phase 2000–2013 focused on the privatization of strategic enterprises. The third phase 2013—onwards has focused on the privatization of everything left, thus completing the process of privatizing the Albanian economy. The privatization process can be summed up as follows:

- The process was propagated as aiming to give back properties and enterprises to their former owners, but it turned out to be selective, problematic, and flawed, which made the process extend over time and increased the potential for corrupt practices.
- The process continued with directly selling several enterprises. The process took place before a stock market was established and when the banking system was weak. Bureaucratic procedures and insufficient

information discouraged foreign investors, who were less involved in this form of privatization. The process was long, over-extended, deeply corrupted, and clientelistic.

- The process then moved on to selling enterprises to employees. At the time, this was perceived as effective because employees were presumed to be knowledgeable about their enterprises. However, it turned out that buyers had no equity for technological improvements and problems arose from giving decision-making powers to a large number of shareholders. The use of privatization securities and money added no value to the process.
- Then, securities and money were privatized on a massive scale. Privatization bonds and money were marketed ahead of enterprises subject to privatization, which led to a wildly fluctuating value, from 26 percent in the beginning to 1.5 percent in 1997. The value fluctuation gave rise to speculation that the securities purchased at 1.5 percent were being used for the purchase of enterprises privatized during the massive privatization process and that, by 1997, had a nominal value. In simple terms, the average investment estimated for these purchases was 20-30 times higher than the money spent for buying securities. Perhaps most important, though is that the majority of these enterprises were bankrupt. It is thus likely that, because these enterprises were generally located in high-value real estate areas, they were purchased primarily because of their land value. Not surprisingly, these enterprises have now been replaced with apartment buildings. Given the egregious nature of these failures, I cannot help but perceive them as intentional strategies to benefit a small cadre of profiteers and further disenfranchise ordinary Albanians. In my view, securities should have been unmarketable, and only after their owners became shareholders could these shareholders sell and purchase shares. This would have boosted the Tirana stock market, which has been inactive from its establishment.

- Finally, strategic enterprise privatization became subject to special laws and was made on a case-by-case basis. The process has a paradoxical history of both success and failure. On the one hand, it combined both clientelistic and geopolitical interests in the practices of selling and then renationalizing enterprises. On the other hand, some the of the privatized companies did achieve the improved management that is the *raisin d'être* of privatization. While there were cases of companies going bankrupt because of massive corruption as well as instances leading to huge losses to the state budget, the strategic enterprises privatization is in my view the only privatization process that balances out positive and negative instances.

After 30 years of ongoing—and overwhelmingly failed—privatization initiatives, the issue of ownership remains the most vexed, distressing, and pressing problem for Albania's economic development. The immovable property market is constantly crippled by lack of clarity about and disputes over ownership, which in turn emerge from having no clear and functional system for property rights administration. In the different stages of privatization, property rights were not clarified, and immovable properties were not clearly documented and registered. This has led to endemic problems in ownership, urban planning, and infrastructure development. Correspondingly, the property administration system was not efficient enough to guarantee justice or allow legitimate owners the enjoyment of their property.

Among the many problems Albania faces with property ownership are the intertwining of large-scale internal migration and the lack of an official mechanism governing land distribution. As Albanians gained freedom of movement after transition (prior to transition, Albanians were strictly confined to the jobs and residences assigned by the state), massive migration from rural areas to urban centres led to a considerable number of families occupying lands and building without permits. Added to this, there were no urban planning or building regulations in place, which enabled new settlers to add to and expand existing buildings. All of these buildings,

additions, and expansions are now considered illegal. At the same time, accurately identifying the status of immovable properties is also a vexed and contentious affair involving multiple processes, including: initial registration; legalization; transfers of state properties to local governmental units; and the implementation of territorial plans, including regulatory plans for coastal areas and digitalization. All these issues have led to the many property disputes brought against the Albanian State at the Strasbourg Count of Human Rights—cases that the state has by and large lost, and which have overburdened the state and hindered economic development.

Another critical issue, and a seemingly never-ending story, is property restitution and compensation to former owners. The law on property return and compensation adopted in 2004 is by and large copied from property restitution laws passed by other Central and Eastern European countries. However, the state budget is unable to compensate former owners with the actual market value of properties expropriated under the communist regime. This process of restitution and compensation became even more problematic following the economic blows of the 2019 earthquake and the global pandemic.

As these examples demonstrate, a clear and functional system of property rights administration, following the rule of law, that accurately documents and registers property, is essential for stability in the immovable properties sale and purchase sector. Only when we achieve this will we be able to reduce disputes over properties and facilitate the sale and purchase process. At present, the chaotic reality of immovable properties in the country continues to be of concern to relevant stakeholders, whose priority must be the efficiency of reforms, including in the responsible state agencies.

Pyramid Scheme Crisis

The pyramid scheme crisis is probably the darkest and most painful time during the transition period in Albania. The pyramid schemes in Albania were similar to Ponzi schemes, with certain companies gathering money from the population and promising high-interest rates; at the peak of the schemes, interest rates climaxed at up to 50 percent per month. While it remains unclear exactly when and how many of the first

small, informal rentier schemes (pyramid schemes) first emerged in Albania, we do have information on some of the small schemes operating as early as 1991-1992. These schemes failed without ado because the value of the money acquired and the geographical area over which they extended were small.

The factors that encouraged the rise, the blossoming, and the fall of rentier schemes included, on the one hand, the weak banking system and the stiff policies on loaning; on the other, money from smuggling, the money people saved from the remittances sent to them by family members working abroad, and the sale of the communist housing allocated to them in privatization as well as of livestock and other goods that could be turned into capital for investing. As Smoki Musaraj so lucidly explains in her analysis of 1997, the single most important factor driving Albanians' mad desire to sell everything they owned and invest in the schemes was the simple desire for a decent home.[11] Even as the shocks of the 90s left people in a socio-economic desolation, they clung to their hope of the democracy-to-come and the economic prosperity this would bring. The slogan proclaiming the dream of Albanians, 'We want Albania to be like Europe', translated into: we want to have a modern, European home. They dreamed the dream that was sold to them: that, within a few years, the country would have a modern economy with democratic institutions in place and the rule of law prevailing; that the country would become a member of NATO and the EU; and that, through foreign aid and foreign direct investments, the country would soon catch up with developed countries. Their hope for this better future periodically erupted into a euphoria that bypassed rationality. This was nowhere more evident than in the collapse of the economy after the Pyramid schemes swindled roughly two-thirds of the population out of their life savings.

The events of 1996-1997 exposed the dream sold to us as surreal and forced us to see the severity of our economic situation. In the first phase of transition, with unemployment and poverty at high levels, rentier firms were promoted (even by various politicians) as capitalist entrepreneurship pioneers, the stars of the new capitalist world that would do miracles for Albania and its development. Indeed, even the IMF

and World Bank saw these 'firms' as making 'an important economic contribution'.[12] As late as 1995, the IMF and World Bank were still lauding Albania as an 'economic success story'. By the time the Bank of Albania and international organizations began sounding the warning bells, the damage had already been done. The riots of 1997, beginning in Vlora and Lushnja and soon overtaking the entire country, were the desperate uproar of people who had lost their savings, and in many cases their homes and personal assets, to a group of swindlers aided and abetted by corrupt politics at home and bad polices imposed from abroad.[13] The state collapsed, and for a short period of time the country was under the control of criminal groups. It was generally understood that these groups were closely linked to political figures in both the Democratic and the Socialist Parties. Murders, fires, rapes, robberies, and looting of businesses were quite frequent at the time. Therefore, many families were forced to migrate, thus giving rise to the second wave of mass migration.

The crisis was caused by disastrous financial policies, pushed by foreign institutions and adopted by the state. It is the most egregious example of the political elite picking and choosing economic policies that curried the favour of international power brokers and strengthened their power base. The complete lack of financial knowledge in general, and with capitalism in particular, made it impossible for Albanians to sufficiently understand the value of money, investments, and profits. Despite the promises made to the population to partially return their losses, nothing has ever actually been done about this. The people have also given up hope—nobody expects to see a lek of anything that they lost.

Establishment and Challenges of Regulatory and Supervisory Authorities in Albania

Structural reforms in Albania followed the standard line of reforms based on the 'Washington consensus': the first wave consisted of the liberalization of prices, exchange rates, foreign trade, etc.; the second wave proceeded with deregulation processes and SME privatization; and the third phase featured large privatizations and structural reforms of regulation and supervision of new markets. In even in the freest economies of developed countries, where several

sectors are regulated by ad-hoc laws, supervisory authorities have to be established in order to ensure compliance with these often complex rules and laws. They provide oversight of things like financial markets and investments. It is understood that such oversight is especially important in the stock and goods markets and banking markets, where beneficiaries of banking services may be unfairly hit by collusions on the cost of money, banking service fees, and other risk elements. In countries with weak institutions and insufficient experience in the free market economy, the 'moral hazard' of competition distortion is even greater (for example, the threat that the safety the state security guarantees to banks could lead to the bad management of the financial market system).

The most critical market of all is the financial market, especially the banking market. And, as the infamous London Interbank Offered Rate (Libor) scandal shows, financial market abuses involving stock markets and banks are all too common, not just in Albania, but around the world.[14] The sweeping global implications of Libor-related fraud rocked the global financial markets; criminal investigations led to upwards of 10 billion dollars in fines in addition to the billions of dollars in private legal settlements and fees. In the wake of serious questions that the Libor scandal has raised over the global problem of 'the role of central banks ... in failing to address, or even abetting, problems with the system',[15] it should hardly come as a surprise that, as the Albanian Competition Authority notes, Albanian financial markets tend to collusion in order to keep interest rates or exchange rates high. In the financial market, which affects the majority of the society, minor distortions to interest rates or exchange rates lead to considerable abusive profiteering amounting to millions, oft times billions, of dollars. Added to this, the huge time lag between liberalization, deregulation and privatization and the establishment of regulatory and supervisory authorities has had additional adverse effects on consumers because it allowed for several businesses to be concentrated in the hands of a few people. The net effect has been competition distortion, inconsistency in the quality of goods and services, and abusive prices.

In developing countries like Albania, the challenges posed by supervisory authorities lacking efficiency is amplified by

larger cultural elements. In addition to rule of law deficiencies characteristic of a developing country, Albania faces deep structural setbacks. For example, the Albanian goods and stock market is not functional, and, in its first days when it was operating, the Financial Supervisory Authority frequently failed to regulate and supervise the market such as it was. Appointed regulators and the institution itself lacked capacity and resources to do the job assigned to them, and, to the extent that they tried to exercise fiscal oversight, corrupting influences exerted pressure to allow abuse.

Compulsory insurance is a prime example of market abuse in Albania. According to international studies, companies in Albania from whom individuals are compelled to buy insurance pay lower levels of compensation on claims in comparison to other countries. This is true across the board, from life and car insurance to other forms of asset insurance. The Authorities' prime role is regulatory, i.e., to protect consumers from market distortions that translate into unfair costs to them; unfortunately, in the case of compulsory insurance, the supervisory authority has not been able to stop companies' predatory exploitation of Albanians.

Another major hindrance to the efficient operation of the supervisory authorities is the high turnover of professional staff. By the latter half of the transition period, a generation of Albanians had been able to acquire the knowledge their elders had lacked about market systems. Well-educated, trained and qualified, they are both shut out of meaningful roles in the financial sector and deeply affected by the unlawful turnover of their superiors. Despite these many challenges, the Albanian Competition Authority has nevertheless managed to conduct in-depth inquiries on the monopolistic tendencies in the fuel, flour, and oil markets, an achievement that should be noted as an indication of what is possible if we can finally break the link between politics and the economy and allow a new and responsible political class to govern.

Current Economic Developments and Reliance on Public-Private Partnerships in the Construction Sector

During the last several years, the Public-Private Partnership (PPP) has dominated conversation in Albania. Theoretically, private-sector funds from PPPs or concessions

facilitate the state budget by allowing private investment to offset short-term development costs, thus giving the state time to devise new economic and social policies that can expand its resources. Moreover, private management may bring several advantages over state management. The private sector typically has a greater potential for technological innovation, and a client-centred focus increases the likelihood that taxpayers will receive better services. In theory, then, the PPP should benefit all parties: the state, the private sector, and the taxpayer, and this benefit should come *without* burdening the state budget and future taxpayers. However, as with abuses in the financial markets, endemic and systemic abuses with PPPs have turned them into a clientelist practice with serious adverse consequences, both immediately and extending indefinitely into the future Albanian economy.

In the first place, PPPs rely on the public procurement process. The public procurement process in Albania has always been marred by clientelism, lack of transparency, and the inclination for corruption. But the PPP exponentially increases that abuse with the considerable number of procurements that have been negotiated without preliminary announcement of the contract. In these cases, the government grants contracts to unsolicited proposals initiated by the private sector. In other words: private companies ostensibly 'partner' with the state, but in fact are cutting deals that promise private capital in order to tap into state resources, including both funds that have been allocated for building projects as well as funds earmarked as 'not available'. The unsolicited PPP is thus the least transparent of all legal procedures in goods, services, and public works procurement, and has become totally corrupt. The Albanian states' use of unsolicited PPPs has in effect handed the economy of the state over to private companies, making them the arbiters determining the socio-economic development of Albania. In addition to these PPPs saddling future taxpayers with a tax debt that they were unable to exercise their democratic right to choose or reject, these PPPs leave decisions that are by rights matters of state in the hands of private companies.

Practically speaking, then, PPPs have been used and abused in egregious ways. Between 2014-2019 alone, the Albanian Government entered into in 12 PPPs. As early

as 2019, then, the annual budget expenses for PPPs were estimated to amount to 3-4 percent of the total state budget. The current government is thus burdening governments to come with the debt load from PPPs for at least the next decade, most probably longer. Saddling future governments with this exorbitant debt is tantamount to consuming the resources of future generations. The extent of the adverse effects this may give rise to is difficult to foresee since we lack a general and sectoral economic development model to analyse this. But, considering the many detrimental economic conditions in Albania, *it is clear* that this debt burden stretching into the foreseeable future *certainly will* have adverse effects.

The exploitation of the Albanian state and its people with the PPP potentially extends harm to Albanians far beyond the purely economic realm. For example, it is the private company that conducts and drafts the feasibility study. The feasibility study is the foundation upon which the PPP is agreed, and the state *must* guarantee its accuracy, reliability, and credibility, as well as protect the state from being taken advantage of by private interests. The Albanian state, however, does no such thing. There is no quality assurance or mechanism for verifying the accuracy of the feasibility study that the private operator provides. Everything from environmental impact to geographical analysis and compliance with budget objectives is determined by the company whose interests the feasibility study serves. At every level, the unsolicited (and too frequently, secret) PPP advances the interests of private individuals at the expense of the interests of the state and its citizens, and without competition.

Under these circumstances, it should come as no surprise that technical issues all too often arise with these PPPs—issues after-the-fact called 'unpredictable', and that always require a renegotiation of the contract in favour of the private company, adding yet another economic burden to the state and the citizens and expanding the debt liability over the lives of the next generation. The obvious question that is not asked: Why is only the state taking responsibility for the 'unpredictable issues' that it is in fact the job of the feasibility study to predict?

Despite their theoretically positive potential, then, every aspect of PPPs as they are implemented in Albania

invites corruption, abuse, and the inexcusable squandering of public money. Unlike with the Pyramid Schemes, about which the IMF was culpably silent until shortly before the country's economy collapsed, the IMF has been calling for the Government of Albania to cease and desist this particularly nefarious practice.[16] It goes without saying that, if the Government fails to improve the legal framework through which major infrastructure projects hand the assets of the state over to private individuals, the long-term consequences to Albania and its citizens will be severe, pervasive, and potentially catastrophic.

Conclusion

Is transition over yet, and has Albania finally turned the corner to a reformed economy? Did Albania manage to establish a viable model of economic development? How has the country forfeited a clear and intelligent strategy for economic development as political parties cut-and-paste mismatched elements of different models to use as tools in their fight for power and control? How have 'reforms' carried out in this way failed, and what consequences has this had for the Albanian economy? And most importantly, what challenges has this left us today, and where are we now headed? We must answer these questions.

Unfortunately, although Albania has already spent thirty years 'transitioning', I fear the word 'transition' will continue to be used for many years to come. The majority of the active working force first started working 'in the transition period'; sadly, they will retire in the interminable period of 'transition' as well. The euphoric hope of the 90s that Albania would soon be a developed country has given way to a pessimism that sees no hope for the future, as amply demonstrated by Albanians fleeing the country now in larger numbers than they have since the regime changed in the 90s. The never ending 'transition' is now replaced with labels like 'fragile democracy' and 'electoral autocracy', though the carrot of EU integration remains the primary bargaining chip of the International Community. The lucky few post-transition countries that are now EU members are held up as the example: This could be you!

The stark contradiction between the promise and the

reality, though, makes ordinary citizens more and more cynical about the entire EU integration rhetoric. While politicians showcase minor changes as huge stories of success, Albania remains trapped in a downward economic spiral. The transition process in Albania has, from the very beginning, lacked any *orientation*. Transitions' failures feed on and feed into the absence of a clear economic or social vision, snap economic decisions, taken at cross-purposes to benefit an elite few; these in turn feed on the lack of a rule of law and further erode judicial integrity and responsibility, thus shoring up the power of political and financial strongmen in an increasingly authoritarian state. Transition's vicious cycle has thus exacerbated authoritarianism and state capture, handed the courts over to a captured state, and has had no positive impact on important transformations. Indeed, we might say that, in fact, the country's progress has been impeded in all directions.

Certainly, Albanians continue to want to be like the European Union. But, if we are ever to achieve this dream, we will need a new and more responsible political class, with a clear strategy that prioritizes the public interest. This political class will have to eschew populist politics, the authoritarian mentality of communist dictatorship, and the flawed practice of snap decisions made without knowledge, consultation, or research. With this first and most fundamental reform—of the political class and their capture by private interests—the country will still need at least fifteen more years to come through this seemingly never-ending 'transition'.

[1] See particularly *Banka e Shqipërisë (Bank of Albania):* Raporti Vjetor 1993 (Annual Report 1993). Tirane, 1993**.** https://www.bankofalbania.org/rc/doc/Raporti_Vjetor_1993_2010_1_6442.pdf (last accessed: 1 March, 2024).

[2] For scholarship explaining how capital flows from extralegal activities impacted the Albanian economy, see *Musaraj, Smoki:* Tales from Albarado: Ponzi Logics of Accumulation in Postsocialist Albania. Ithaca: Cornell University Press, 2020. For data specific to money laundering 1992–1992, see *Jarvis, Chris*: The Rise

and Fall of Albania's Pyramid Schemes. In: Finance and Development: A Quarterly Magazine of the International Monetary Fund, 2000 / Volume 37, 2000, number 2. https://www.imf.org/external/pubs/ft/fandd/2000/03/jarvis.htm (last accessed: 1 March, 2024).

[3] For a detailed summation of reforms, see particularly *Banka e Shqipërisë (Bank of Albania):* Raporti Vjetor 1997 (Annual Report 1997). Tirane, 1997**.** https://www.bankofalbania.org/Botime/Botimet_sipas_viteve/Raporti_Vjetor_1997.html (last accessed: 1 March, 2024).

[4] See specifically For the Bank of Albania, Law No. 7559, dated 22 April 1992; and On Banks in the Republic of Albania, Law No. 7560, dated 28 April 1992. https://www.bankofalbania.org/About_the_Bank/Legislation/Laws/Document_Title_17855_1.html (last accessed: 1 March, 2024).

[5] For a detailed explanation of these budgetary policies, see *Meksi, Prime Minister Aleksandër:* Medium-Term Program of the Government for the Economic Development of Albania in 1993–1996 (Conference paper), Politikat Publike. Tirana, Albania, 24 November 1993. https://shtetiweb.org/2015/09/14/programi-qeverise-aleksander-meksi-2-11-korrik-1996-10-mars-1997/ (last accessed: 1 March, 2024); see also the analysis in *Organization for Economic Cooperation and Development:* Budgeting in Albania. https://web-archive.oecd.org/2015-06-04/364101-Budgeting-in-Albania.pdf (last accessed: 1 March, 2024).

[6] See especially *Meksi, Prime Minister Aleksandër / Vadinaj, Eriona*: Medium-Term Program of the Government for the Economic Development of Albania in 1993–1996 (Conference Paper Presented at 'Brief History of Fiscal System in Albania: The Necessity for Effectiveness'), 24 November 1993. In: International Journal of Economics, Commerce and Management, 2016 / Volume 4, number 7, July 2016**,** p. 684-690. https://ijecm.co.uk/wp-content/uploads/2016/07/4743.pdf (last accessed: 1 March, 2024).

[7] For inflation control measures, see *Banka e Shqipërisë (Bank of Albania):* Raporti Vjetor 1993 (Annual Report 1993). Also see *McNeilly, Caryl J. / Schiesser-Gachnang, Doris:* Reducing Inflation: Lessons from Albania's Early Success. In: IMF: Working Papers of the International Monetary Fund, number 78, May 1998. https://www.elibrary.imf.org/view/journals/001/1998/078/article-A001-en.xml (last accessed: 1 March, 2024).

[8] The Stock Market was first established in May 1996 as a department of the Bank of Albania. For information about the Tirana Stock Exchange (TSE), see the TSE website (www.tse.com.al [last accessed: 1 March, 2024]) and its history page (https://www.tse.com.al/history/ [last accessed: 1 March, 2024]).

[9] For an index of IMF publications from the period supporting free entrepreneurship, see International Monetary Fund Staff Papers 2020 / Volume 47 / number 1, November 2020. https://www.imf.org/external/pubs/ft/staffp/2000/00-01/index.htm (last accessed: 1 March, 2024).

[10] See *Memaj, Fatmir*: Privatization in Albania: Achievements, Failures, and Future. Tiranë: Toena, 1998.

[11] *Musaraj*: Tales from Albarado, p. 129-135.

[12] *Jarvis*: The Rise and Fall of the Pyramid Schemes in Albania. https://www.imf.org/external/pubs/ft/fandd/2000/03/jarvis.htm (last accessed: 1 March, 2024).

[13] For a detailed, insider's play-by-play account of the events leading up to and following the 1997 economic collapse, see *Lubonja, Fatos*: False Apocalypse: From Stalinism to Capitalism. Hodgson, John (trans.): Bloomsbury: Istros Books, 2016. For a broad overview of the early years of transition, see *Abrahams, Fred*: Modern Albania: From Dictatorship to Democracy in Europe. New York: New York University Press, 2015.

[14] See James McBride for an analysis of the Libor scandal, in which notable banks such as Deutsche Bank, Barclays, UBS, Rabobank, and the Royal Bank of Scotland conspired 'to manipulate interest rates for profit starting as far back as 2003' so that 'its traders could make profits on derivatives pegged to the base rate'. *McBride, James*: Understanding the Libor Scandal (Council on Foreign Relations Backgrounder). Council on Foreign Relations, updated 12 October 2016. https://www.cfr.org/backgrounder/understanding-libor-scandal (last accessed: 1 March, 2024).

[15] Ibid.

[16] For a concise report of this, see *Koleka, Benet*: IMF Team Warns Albania of Fiscal Risks from PPPs, AIC. Reuters' Business News, 26 November 2019. https://www.reuters.com/article/us-albania-imf-idINKBN1Y02DK (last accessed: 1 March, 2024).

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